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TRINITY COLLEGE, DUBLIN.

# SCHOOL OF PHYSIC.

## RIGHTS OF PROFESSOR OF ANATOMY.

1873.

THE UNIVERSITY

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*THE SCHOOL OF PHYSIC—RIGHTS OF PROFESSOR OF ANATOMY.*

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# VISITATION

HOLDEN ON

MONDAY, THE 3RD, TUESDAY, THE 4TH, AND WEDNESDAY, THE 12TH OF FEBRUARY, 1873,

BEFORE

THE RIGHT HON. SIR JOSEPH NAPIER, BART.,

VICE-CHANCELLOR OF THE UNIVERSITY;

AND

GEORGE BATTERSBY, Q.C., LL.D.,

DEPUTED BY

THE RIGHT HON. AND MOST REV. RICHARD CHENEVIX, D.D.,

LORD ARCHBISHOP OF DUBLIN,

*VISITORS OF THE COLLEGE.*

## Report of Proceedings,

BY

STEPHEN N. ELRINGTON, ESQ.,

BARRISTER-AT-LAW.

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# INTRODUCTION.

The jurisdiction of the Visitors of Trinity College to hear the Appeal in this case, so far as it related to rights and duties created under the School of Physic Act (40 Geo. III. c. 84, Ir.), depends on the 29th section of that Act, and might have been exercised by the Visitors without the formality of a General Visitation of the College. But as it was doubtful whether that part of the subject matter of the Appeal, which related to the appropriation of the Fees of Students for attending Dissections, could be dealt with, except under their general jurisdiction, the Visitors were requested by the Provost and Senior Fellows of the College to hold a General Visitation, in which the whole subject of the Petition could be brought under their cognizance. This Visitation was holden according to the provisions of the 16th chapter of the revised Code of the College Statutes; and as His Grace the Archbishop of Dublin was unable to attend in person, Dr. Battersby (the Chancellor of the Diocese) was duly deputed to act in his place as Second Visitor.

Thus the power specially conferred by the School of Physic Act was combined with the general authority of the Visitors of the College, and whatever objection ultimately remained as to the jurisdiction to determine any of the matters in controversy was waived on both sides, with a view to obtain a decision by which both parties were willing to abide. It was not necessary, therefore, to pronounce a formal opinion on any question relating to the limits of Visitorial jurisdiction in the case.

# University of Dublin,

TRINITY COLLEGE.

## STATEMENT

*Of Case on behalf of the* Provost *and* Senior Fellows *of the said College, to be submitted to the Visitors, at a Visitation appointed to be holden on Monday, the 3rd day of February,* 1873.

1. At a very early period three Lectureships for the teaching of Anatomy and Surgery, Chemistry, and Botany, were established in Trinity College, by the Provost and Senior Fellows of the said College, and were supported out of the funds of the said College; and the said Lecturers were officers, and under the control of the said Provost and Senior Fellows, as the governing Body of the said College.

2. On the 5th day of February, 1711, the then Provost and Senior Fellows of the said College passed the following Resolution:—"At the request of the College of Physicians for the promoting the study of Physic, ordered by the Provost and Senior Fellows that, besides the usual Acts, every Candidate Bachelor of Physic be examined in all the parts of Anatomy relating to the *Œconomia Animalis*, and in all the parts of Botany, Chemistry, and Pharmacy. Every Candidate Doctor to be examined as to the aforesaid subjects, and likewise in the explication of Hippocrates and Aphorisms, and the theory and cure of external and internal diseases; and the President and Fellows of the College of Physicians to examine."

3. The following entry appears in the Books of the College, under the date of the 8th September, 1716:—"This day Doctor Robinson and Surgeon Greene were, by the Provost and Senior Fellows, appointed to officiate in the Anatomy School as Lecturer and Anatomist."

4. The following entry appears in the said books, under the date of the 19th June, 1717:—"The same day Dr. Robinson was, by a majority of voices, turned out from being Anatomist,

and Doctor Nagle elected to the same. Ordered that the Bursar pay £60 to Surgeon Greene, in order to purchase preparations for illustrating several parts of the human body."

5. By an Act passed by the Irish Parliament, in the 40th year of the reign of King Geo. 3, cap. 84, "for establishing a complete School of Physic in Ireland," provision was made for the establishment and endowment of four Professorships therein mentioned; and also for the building of an Hospital, to be called Sir Patrick Dun's Hospital; and (by sect. 11) it was enacted, that the said Professors, called the King's Professors, and their successors, should read and give Clinical Lectures upon the patients in said Hospital, at least two days in each week during every Session; and that the said King's Professors and the University Professors thereinafter mentioned should read such Lectures during the space of three months in alternate succession, as had been theretofore practised, or in such other order as they should agree upon amongst themselves; and that every pupil who should attend the said Lectures should pay to the Professor whose Lectures he should attend the fee of three guineas for each three months' Course of Lectures, together with certain other fees to the Treasurer, for the use of the said Hospital; and (sect. 13) after reciting that by an Act, passed in the 25th year of King Geo. 3, it was enacted that there should be three Professors in the University of Dublin, who should be called University Professors, that is to say, a Professor of Anatomy and Chirurgery, a Professor of Chemistry, and a Professor of Botany; and that the then present Lecturers in the said several branches should be constituted and appointed Professors in the said several branches respectively; It was enacted that the said University Professors should have perpetual continuance and succession, and should be elected as therein mentioned, and (sect. 14) should be supported at the expense of the University; and (sect. 18) that the University Professors should be elected in the usual and accustomed manner by the Provost, or, in his absence, the Vice-Provost and Senior Fellows of Trinity College, Dublin; and (sect. 23) that every Professorship mentioned in the Act should become vacant at the end of every seventh year from the date of the election, Provided always that it should be lawful for the then present Professors in Chemistry and Botany in Trinity College, Dublin, to hold the said University Professorships during their respective good behaviour, being the tenure of their then present Professorships; and (sect. 26) that the said Provost and Senior Fellows, or a majority of them, together with the said Provost, should have power from time to time to make rules and orders to regulate the conduct of the said University Professors.

Provided always that the said rules and orders should not be inconsistent with any of the clauses or directions contained in the Act; and (sect. 33) that it should be lawful for the said several Professors to charge reasonable fees, to be paid by all such persons as should attend the respective Lectures, except the Clinical Lectures, the fees for which had been (by sect. 11) already provided for; the said fees to be paid on admission, and to be from time to time regulated in respect to Sir Patrick Dun's Professors, by the President and College of Physicians, and in respect to the said University Professors by the Provost and Senior Fellows of Trinity College, Dublin; and (sect. 39) general and most extensive powers in relation to the government of the said College of Physicians and the said King's Professors are conferred upon and vested in the Visitors thereby appointed of the said College of Physicians.

6. Shortly after the passing of the Act, Sir Patrick Dun's Hospital was built; and it has been since maintained under the government of a Board constituted under the said Act; and the duties of Medical Attendance and of delivering Clinical Lectures in the Hospital have been since performed by the King's Professors and the University Professors.

7. The only duties appointed for the Professors under the said Act are to attend the said Hospital, and to deliver certain Clinical and Professorial Lectures; and the only fees to which the said Professors are entitled thereunder are the fees for Clinical Lectures, regulated by sect. 11 of the said Act, and under sect. 33 reasonable fees for the Professorial Lectures. Such last mentioned fees to be from time to time regulated in respect of the said University Professors, by the Provost and Senior Fellows of Trinity College, Dublin.

8. For a long series of years there has existed in Trinity College a building appropriated to the purposes of Dissections and Demonstrations. This building was erected at the expense of the College, and has been maintained out of the College funds; and large sums of money have been expended by the College in its erection, enlargement, improvement, and maintenance. It is not subject to the provisions of the said Act, and has always been regulated by rules and orders from time to time made by the said Provost and Senior Fellows, as the governing Body of Trinity College, and not under or by virtue of any authority given to them by the said Acts.

9. The Professor of Anatomy and Chirurgery for the time being and the University Anatomist have always been nominated and appointed by the Provost and Senior Fellows, to attend in such Dissecting-room and on Demonstrations therein; and

the said Professor of Anatomy is responsible to the said Provost and Senior Fellows, as the governing Body of the said College, for the efficiency of the instructions given in the said Dissecting-room; and it is his duty to report any negligence to the said Provost and Senior Fellows, and to take part in such Dissections and Demonstrations, and in the instruction of the Students attending the same.

10. In consideration of the due discharge of the several duties mentioned in the last preceding paragraph, a certain portion of the surplus of the Fees paid by Students attending Dissections and Demonstrations, after payment of the expenses of the School, has been allotted by the said Provost and Senior Fellows to the said Professor of Anatomy. The portion so allotted has been varied in amount from time to time, by the said Provost and Senior Fellows, according to their discretion, and as the exigencies of the School appeared to them from time to time to require.

11. The said Professor is also paid a salary of £200 per annum out of the Funds of the College, and a further annual sum of £50, in consideration of his granting to Arts' Students the privilege of attending a Second Course of Lectures free.

12. The said sources of income are quite distinct from and in addition to the fees for Clinical and Professorial Lectures, to which he is entitled under the said Act of the 40th Geo. III., c. 84.

13. In the year 1858, the University Professorship of Anatomy and Chirurgery became vacant, by the death of D. Harrison, and in the month of October, 1858, Dr. Benjamin George M'Dowel was duly appointed by the Provost and Senior Fellows to be the Professor of Anatomy and Chirurgery, and he then entered upon the duties of that office, including the before-mentioned duties in the Dissecting-room and Demonstrations.

14. The term of office of the said Dr. M'Dowel, as such Professor, having expired in the year 1865, he was then continued in the said office for a further period of seven years, under the authority given in that behalf by the said Act.

15. Previously to the said continuance in office of the said Dr. M'Dowel, there was an express understanding between him and the Provost and Senior Fellows, that he, the said Dr. M'Dowel, would attend for two hours daily in the Dissecting-room. The said Dr. M'Dowel had been appointed Physician to the Richmond, Whitworth, and Hardwicke Hospitals previously to the year 1858.

16. In and before the year 1867, a system had existed in four Hospitals in Dublin, of allowing Medical Teachers to hold ap-

pointments in more than one Clinical Hospital at the same time. These were the Mater Misericordiæ Hospital, the Jervis-street Infirmary, the House of Industry Hospitals (consisting of the Richmond, Whitworth, and Hardwicke Hospitals), and Sir Patrick Dun's Hospital. But it was found that this system interferedwith the regular and proper discharge of their duties by the Medical Officers. This system was abolished in the Mater Misericordiæ Hospital and the Jervis-street Infirmary, about the year 1867, by the establishment of a regulation, that no Medical Officer of these Institutions should hold at the same time an appointment as Medical Officer in any other Clinical Hospital. A similar rule was shortly after adopted in the House of Industry Hospitals, and was acted upon by the governing Body of that Institution, who, on the election by them of a Medical gentleman to the office of Clinical Surgeon in the said Hospital, imposed upon him the condition that he should give up the office which he then held, of Surgeon to another Hospital. The Provost and Senior Fellows of Trinity College, acting upon a similar rule, prohibited the University Anatomist from seeking the office of Surgeon to the Meath Hospital, he being a Surgeon of Sir Sir Patrick Dun's Hospital at the same time.

17. On the 1st day of February, 1868, the Provost and Senior Fellows made the following rule or regulation, which was duly entered on the Register of the said College :—

> "Resolved,—That in future no University Professor in the School of Physic shall be allowed to hold an appointment as Medical Officer to any Clinical Hospital, other than that of Sir Patrick Dun. N. B.—This rule not to affect existing arrangements."

18. The said rule was approved by the College of Physicians; and a similar rule was adopted by the last-named College to regulate the conduct of the King's Professors, and was subsequently acted upon by them in the year 1869; and Dr. William Moore, who was then elected by them to the office of Professor of the Practice of Medicine in the King and Queen's College of Physicians, was required, in pursuance of the said rule, to resign the office of Clinical Physician to Mercer's Hospital, which he then held, and which last-mentioned appointment he then accordingly resigned.

19. The clause or addendum in the said rule or Resolution of the 1st February, 1868, referring to the rule as not interfering with existing arrangements, means only, as in fact it was intended to mean, that the then Professor of Anatomy and Surgery, who had been, as before stated, continued in his office for another

term of seven years, from the 9th of October, 1865 (at which period no such rule was in existence), should not, during his then tenure of such Professorship, be affected by such rule. The said Benjamin M'Dowel at that time held, and still continues to hold, the office of Physician to the Whitworth Hospital.

20. On the 22nd day of June, 1872, it was officially communicated to the said Dr. M'Dowel that the term of his then Professorship would expire on the 14th day of October, 1872.

21. On the 2nd day of July, 1872, the Provost and Senior Fellows caused the following advertisement to be published in the "London and Dublin Gazette":—

"TRINITY COLLEGE, DUBLIN.

"Pursuant to the provisions of the Act 40 Geo. 3, notice is hereby given, that the Professorship of Anatomy and Chirurgery in Trinity College will become vacant on October 14, 1872; and that on October 19, 1872, the Provost and Senior Fellows, at the Board-room of Trinity College, will proceed to elect a Professor of Anatomy and Chirurgery.

"The emoluments and advantages of the Professorship consist in a fixed salary of £200 per annum, and of fees of three guineas each, payable by each Student attending a three months' Course of Clinical Lectures delivered by the Professor in Sir Patrick Dun's Hospital.

"The Professor is also entitled to charge reasonable fees to be paid by all persons attending his Lectures (other than Clinical); such fees to be regulated from time to time by the Provost and Senior Fellows.

"He is also entitled to a portion of the profits arising from the Dissecting School; such proportion being from time to time regulated by the Provost and Senior Fellows.

"In addition to the above fixed salary of £200, a further sum of £50 per annum is paid to the Professor, in consideration of certain exemptions in the case of Students in Arts having their names on the books of the College.

"The Professorship is open to all persons who have taken Medical Degrees, or have obtained a licence to practise from the King and Queen's College of Physicians in Ireland, in consequence of a testimonial under the Seal of Trinity College, Dublin.

"By a Resolution of the Provost and Senior Fellows, no University Professor in the School of Physic can hold an appointment as Medical Officer to any Clinical Hospital other than that of Sir Patrick Dun.

"All candidates are required to send in their names, with the places of their education, the Universities where they have taken their Medical Degrees, and the places where they have practised, to the Registrar of Trinity College, Dublin, and the Registrar of the King and Queen's College of Physicians, Dublin, on or before Saturday, October 5, 1872.

"JOHN TOLEKEN,
"*Registrar, Trinity College Dublin.*

"J. MAGEE FINNY,
"*Registrar, King and Queen's College of Physicians, Ireland.*"

22. Under and in pursuance of the aforesaid advertisement, the said Dr. M'Dowel offered himself as a candidate for the said Professorship, and was elected to the said office by the said Provost and Senior Fellows, on the 26th day of October, 1872.

23. The said Dr. M'Dowel was elected to said office without any waiver of or release from the rule of 1st February, 1868, by the Provost and Senior Fellows. But instead of conforming to said rule, the said Dr. M'Dowel, who, by the advertisement, and otherwise, had full notice thereof, persisted in holding his appointment in the Whitworth Hospital, notwithstanding his election to the said Professorship. The Provost and Senior Fellows, observing his breach of the rule, caused the Registrar to write to Dr. M'Dowel a letter, dated 9th November, 1872, calling the attention of the said Dr. M'Dowel to the said Resolution; and again, by letter dated the 16th November, 1872, the Registrar informed the said Dr. M'Dowel that the Provost and Senior Fellows, who constituted the Board of the said College, considered that under the joint Resolutions of the College of Physicians and the Board of Trinity College, and the terms of the advertisement for the Professorship, they could not sanction the attendance of the said Dr. M'Dowel at the Whitworth Hospital; and, by a further letter, dated the 28th day of November, 1872, the said Registrar again called the attention of the said Dr. M'Dowel to the same matter.

24. On the 24th day of December, 1872, the said Provost and Senior Fellows passed the following Resolution:—"The Provost and Senior Fellows of Trinity College, having taken into consideration a communication from Benjamin M'Dowel, M. D., Professor of Anatomy and Chirurgery, in reference to his holding the office of Physician in the Whitworth Hospital, and being advised that his doing so is a violation of the order dated

the 1st day of February, 1868, and also of the conditions upon which he was elected to the said Professorship on the 26th day of October last, it is this day ordered by the Provost and Senior Fellows, that the said Benjamin M'Dowel do, within fourteen days from this date (December 24, 1872), resign his appointment in the said Whitworth Hospital, and any other Hospital in which he holds any appointment, except Sir Patrick Dun's Hospital; and should he refuse or neglect so to do within the time aforesaid, such measures shall be taken as may be necessary to enforce compliance with this order; and it is further ordered, that a copy of this Resolution be communicated to Dr. M'Dowel.

25. A copy of the said Resolution was forwarded on the said 24th day of December, 1872, to the said Dr. M'Dowel.

26. The said Dr. M'Dowel has refused to comply with any of the said Resolutions, and still continues to hold his said appointment in the Whitworth Hospital.

27. The Provost and Senior Fellows submit that the said Resolution of the 1st February, 1868, was a valid Resolution, and that the said Provost and Senior Fellows had full power and authority to pass the same; and that it is binding on the said Dr. M'Dowel.

28. The said Provost and Senior Fellows further submit that the said advertisement of the 2nd day of July, 1872, conveyed a plain intimation and notice to the said Dr. M'Dowel of the terms and conditions upon which he, or any other Candidate, would be elected to the said Professorship; and that the said Dr. M'Dowel having become a candidate for the said appointment, after and in pursuance of such advertisement, is bound to comply with the terms and conditions therein contained, and to resign his said appointment in the Whitworth Hospital; and that his refusal to do so is a breach of contract.

29. The said Provost and Senior Fellows believed, when they elected the said Dr. M'Dowel to the said Professorship, on the 26th day of October, 1872, that he would comply with the terms and conditions mentioned in the said advertisement, and they would not have elected him if they knew or believed that he would not comply with them.

30. The said Provost and Senior Fellows further submit that they had full power and authority to pass the said Resolution of the 24th day of December, 1872, and that the same is binding on the said Dr. M'Dowel, and that he cannot continue to hold the Professorship of Anatomy without resigning his appointment in the Whitworth Hospital.

31. They also submit that Dr. M'Dowel, as a Professor and officer of the College, is under the authority and control of the said Provost and Senior Fellows, as the governing Body of the said College; and that the said Dr. M'Dowel, by his refusal to obey the said Resolution, and by his continuing to hold the said appointment in the Whitworth Hospital, is guilty of contumacy.

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TO THE RIGHT HONORABLE HUGH M'CALMONT, BARON CAIRNS, AND HIS GRACE THE MOST REVEREND RICHARD CHENEVIX, LORD ARCHBISHOP OF DUBLIN, VISITORS OF THE COLLEGE OF THE HOLY AND UNDIVIDED TRINITY, NEAR DUBLIN.

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# THE HUMBLE PETITION

*Of* BENJAMIN GEORGE M'DOWEL, *Doctor of Medicine, and Professor of Anatomy and Chirurgery in the University of Dublin, of No. 5, Merrion-square, South, Dublin,*

SHEWETH AS FOLLOWS—

1. By an Act passed in the 40th year of King Geerge III., cap. 84, for establishing a complete School of Physic in Ireland, it was enacted, among other things, that four Professorships therein mentioned should be established and endowed out of the estates of Sir Patrick Dun, and that it should be lawful for the President and Fellows of the King and Queen's College of Physicians in Ireland, from time to time, to appoint four Professors to be called the King's Professors in the City of Dublin on the foundation of Sir Patrick Dun, and also that measures should be taken for building an hospital to be called Sir Patrick Dun's Hospital; the government of which was thereby vested in a Board consisting of the Visitors of the College of Physicians, of the President, Vice-President, and Censors of the same; of the Provost of Trinity College, and of twelve other persons to be elected as therein provided; and (sec. 11) that the said King's Professors, and their successors, should read and give Clinical Lectures upon the patients in said Hospital at least two days in each week during every Session, and that the said King's Professors and the University Professors, thereinafter mentioned, should read such Lectures during the space of three months in alternate succession as had been theretofore practised, or in such

other order as they should agree upon amongst themselves, and that every pupil who should attend the said Lectures should pay to the Professor, whose Lectures he should attend, the sum of three guineas for each three months' Course of Lectures, together with certain other fees to the Treasurer for the use of the Hospital; and (sec. 13) after reciting that by an Act passed in the 25th year of King George III., it was enacted that there should be three Professors in the University of Dublin who should be called University Professors, that is to say, a Professor of Anatomy and Chirurgery, a Professor of Chemistry, and a Professor of Botany, it was enacted that the said University Professors should have perpetual continuance and succession, and should be elected in the manner, for the time, and subject to the regulations thereinafter mentioned, and should be supported at the expense of said University; and (sec. 18) that the University Professors should be elected in the usual and accustomed manner by the Provost, or in his absence the Vice-Provost and Senior Fellows of Trinity College, Dublin; and (sec. 19) that previous to every election three months notice should be given in the *Dublin* and *London Gazettes*, setting forth the Professorship or Professorships vacant, or expected to be vacant, the emoluments and advantages attending such Professorship or Professorships, the time and place of the intended election or elections; and desiring that all candidates should send in their names as therein directed, with a statement of their qualifications, to the end that opportunity might be given of inquiring into the merits of every candidate; and (sec. 21) that immediately before every election the electors should take the prescribed oath; and (sec. 22) that immediately after every Professor should be declared duly elected, he should take the prescribed oath to perform the several duties of the Professorship, which oath the Provost, or in his absence the Vice-Provost, of Trinity College, Dublin, in the case of the University Professors, was thereby respectively empowered and required to administer; and (sec. 23) that every Professorship mentioned in the Act should become vacant at the end of every seventh year from the date of the election; but (sec. 25) that every Professor should be capable of re-election; and (sec. 26) that the said Provost and Senior Fellows, or a majority of them, together with the said Provost, should have power, from time to time, to make rules and orders to regulate the conduct of the said University Professors. Provided always that the said rules and orders should not be inconsistent with any of the clauses or directions contained in the Act; and (sec. 28) that if any Professor

should wilfully neglect to perform the duties of his Professorship, it should be lawful for the Provost, or in his absence the Vice-Provost, and Senior Fellows of Trinity College, Dublin, in case of the University Professors, to admonish the said Professors, and in case of obstinate neglect of duty after such admonition, to deprive the said Professor of his Professorship. Provided always (sec. 29) that it should be lawful for any Professor so ordered, as aforesaid, to be admonished or deprived, to appeal in the case of any of the University Professors, to the Visitors of Trinity College, Dublin, which said appeal should be lodged in one week after said order for admonishing or depriving, and that it should be lawful for the said Visitors to affirm or reverse the order, and in hearing such appeals, to examine witnesses upon oath, which oath the said Visitors were thereby empowered to administer; and (sec. 33) that it should be lawful for the said several Professors to charge reasonable fees to be paid by all such persons as should attend the respective Lectures, except the Clinical Lectures, the fees for which had been (by sec. 11) already provided for, the said fees to be paid on admission, and to be from time to time regulated in respect to Sir Patrick Dun's Professors by the President and College of Physicians, and in respect to the said University Professors, by the Provost and Senior Fellows of Trinity College, Dublin.

2. Shortly after the passing of the Act Sir Patrick Dun's Hospital was built, and has been since maintained under the government of a Board constituted under the Act; and the duties of medical attendance and of delivering Clinical Lectures in the Hospital have been since performed by the King's Professors and the University Professors.

3. In the year 1846 your Petitioner was appointed by His Excellency the Lord Lieutenant to be Physician to the Richmond, Whitworth, and Hardwicke Hospitals, situate in South Brunswick-street, Dublin. He still holds that office, to which he was appointed for his life. Its duties consist of visiting the Hospitals, and during certain months in each year (in alternation with the three other Physicians of the said Hospitals), in giving clinical instruction to students attending the said Hospitals.

4. In the year 1858 the University Professorship of Anatomy and Chirurgery became vacant by the death of Dr. Harrison, and notice of an election having been duly given by the Provost and Senior Fellows of Trinity College, your Petitioner sent in a statement of his qualifications, to which he refers, in

which, among other things, he stated that he held the appointment of Physician to the Richmond, Whitworth, and Hardwicke Hospitals, and was "one of the Clinical Lecturers to these Hospitals—a circumstance, perhaps, of some importance, as on the Professor of Anatomy and Chirurgery devolves, in addition to his other duties, an important one, viz.—that of giving medical clinical instruction in Sir Patrick Dun's Hospital."

5. Your Petitioner was, in October, 1858, duly appointed by the Provost and Senior Fellows to be the Professor of Anatomy and Chirurgery, and immediately entered on the duties of that office.

6. The emoluments of the Professorship consist—1st. Of a fixed salary of £200 per annum paid by Trinity College; 2nd. Of the fees of three guineas each paid by the students for attending Clinical Lectures, under sec. 11 of the Act, 40 George III.; 3rd. Of fees paid by students attending the Professor's Lectures in Anatomy in Trinity College; and 4th. Of the surplus of the fees paid by students attending Demonstrations and Dissections under the instruction of the Professor in the School of Anatomy at Trinity College, after payment of the expenses of the School. Until about the year 1865 the fees for dissections were collected by the Senior Demonstrator for the Professor, who appointed and paid the salaries of all the Demonstrators, paid the expenses of providing subjects, and the other expenses of the School, and retained the balance for his own use, not accounting with any person. The Senior Demonstrator, by agreement with the Professor, received as his remuneration one-half of the surplus of the fees.

7. About 1865, it was arranged that the Senior Demonstrator should be appointed University Anatomist, continuing to assist the Professor in the School, and receive one-half of the surplus of the fees, and this arrangement continued until the 1st February, 1868, during which period the University Professor and the University Anatomist collected the fees, paid the salaries and expenses, and divided the surplus between them.

8. In October, 1865, on the expiration of his first period of office, your Petitioner was duly re-elected Professor of Anatomy and Chirurgery for a period of seven years, ending 14th October, 1872.

9. By the School of Physic Amendment Act, 1867 (30 Vic., cap. 9), it was, among other things, enacted (sec. 3), that from and after the passing of that Act, the University Professors of Chemistry and Botany should cease to deliver the Clinical Lectures required by the Act of 40 George III., and instead

thereof such Lectures should be delivered by the Professor of Surgery in Trinity College and the University Anatomist; and (sec. 4) that in case any of the University Professors should neglect to attend Sir Patrick Dun's Hospital, or deliver Clinical Lectures as required by the said Act, it should be lawful for the Provost, or, in his absence, the Vice-Provost and Senior Fellows of Trinity College, Dublin, to dispense with his delivering such Lectures, and to appoint a Physician or Surgeon to attend the said Hospital and deliver the Clinical Lectures in the place of such Professor so neglecting to lecture, and that the Physician or Surgeon so appointed should be entitled to receive and be paid the fees to which the Professor so neglecting to attend the seid Hospital and deliver such Lectures would have been entitled.

10. On 1st February, 1868, the following Resolutions were passed by the Provost and Senior Fellows:—

> "1st.—Resolved, that Dr. Bennett (theUniversity Anatomist) be authorised to receive the fees for dissections, and lodge them in bank to the credit of the Bursar, who will undertake the distribution of the same.
>
> "2nd.—Resolved, that in future no University Professor in the School of Physic shall be allowed to hold an appointment as Medical Officer to any Clinical Hospital other than that of Sir Patrick Dun. N. B.—This rule not to affect existing interests."

11. The interests of your Petitioner, existing on 1st February, 1868, were :—

> "1st.—His Professorship, the second period of which expired on 14th October, 1872; and 2nd—His office of Physician to the Richmond, Whitworth, and Hardwicke Hospitals, which is still existing, and which he holds for his life."

12. From 1st February, 1868, Dr. Bennett has received the fees for dissections, and the Bursar has regularly accounted with the Professor and Anatomist for them, paying the expenses and salaries, and distributing the net surplus, without deduction for poundage or otherwise, between the Professor and the University Anatomist, and no claim whatever was asserted or exercised by the Provost or Senior Fellows to do anything except regulate these fees until the Resolutions of October 24th, 1872, hereinafter referred to.

13. On September 25th, 1869, the Provost and Senior Fellows passed the following Resolution:—

"The Board of Governors of Sir Patrick Dun's Hospital "having represented to the Provost and Senior Fellows of "Trinity College, that the attendance of Dr. M'Dowel at the "Hospital is irregular and insufficient; it is Resolved that the "Provost and Senior Fellows will, in compliance with the "School of Physic Act, dispense with the delivery of Clinical "Lectures by Dr. M'Dowel, and appoint a surgeon to attend "the Hospital in his place, should the Governors of the Hos-"pital consider such a step to be necessary."

14. On September 28th, 1869, the Governors resolved that such a step was in their opinion necessary, and on October 9th, 1869, the Provost and Senior Fellows passed a Resolution dispensing with your Petitioner's attendance at the Hospital, and soon afterwards appointed a surgeon to attend in his place. Your Petitioner, both before and after this Resolution, by letters to the Provost and Senior Fellows and to the Board of Governors, protested against it; asserted that the charges against him were unfounded, and repeatedly required an investigation. By letter dated October 30th, 1869, from the Registrar of Trinity College, your Petitioner was informed that the Board felt that the Governors were the best judges of the points at issue, and no investigation was granted or held. Your Petitioner from that time ceased to attend Sir Patrick Dun's Hospital, but continued to perform all the other duties of his Professorship.

17. On July 2nd, 1872, the following advertisement appeared in the *Dublin Gazette*:—

"TRINITY COLLEGE, DUBLIN.

"*Pursuant to the provisions of the Act*, 40 *Geo.* III.

"NOTICE is hereby given, that the Professorship of Anatomy and Chirurgery in Trinity College will become vacant on October 14, 1872, and that on October 19, 1872, the Provost and Senior Fellows, at the Board-room of Trinity College, will proceed to elect a Professor of Anatomy and Chirurgery.

"The emoluments and advantages of the Professorship consist in a fixed salary of £200 per annum, and of fees of three guineas each, payable by each Student attending a three months' course of Clinical Lectures, delivered by the Professor in Sir Patrick Dun's Hospital.

"The Professor is also entitled to charge reasonable fees, to be paid by all persons attending his Lectures (other than Clinical), such fees to be regulated from time to time by the Provost and Senior Fellows.

"He is also entitled to a portion of the profits arising from the Dissecting School, such proportion being from time to time regulated by the Provost and Senior Fellows.

"In addition to the above fixed salary of £200, a further sum of £50 per annum is paid to the Professor in consideration of certain exemptions in the case of Students in Arts having their names on the books of the College.

"The Professorship is open to all persons who have taken Medical Degrees, or have obtained a licence to practise, from the King and Queen's College of Physicians in Ireland, in consequence of a testimonial under the Seal of Trinity College, Dublin.

"By a Resolution of the Provost and Senior Fellows, no University Professor in the School of Physic can hold an appointment as Medical Officer to any Clinical Hospital other than that of Sir Patrick Dun.

"All candidates are required to send in their names, with the places of their education, the universities where they have taken their Medical Degrees, and the places where they have practised, to the Registrar of Trinity College, Dublin, and the Registrar of the King and Queen's College of Physicians, Ireland, on or before Saturday, October 5, 1872.

"John Toleken,
"*Registrar, Trinity College Dublin.*

"J. Magee Finny,
"*Registrar, King and Queen's College*
"*of Physicians, Ireland.*"

18. Your Petitioner offered himself for re-election, and set out his claims and qualifications in a printed application to the Provost and Senior Fellows, to which he refers, which truly stated the great improvement which had taken place in the Medical School since his first appointment. He further stated that the announcement of the approaching election for the Professorship contained, in some instances, an addendum intimating that the Board of Trinity College would give a preference to a candidate who would relinquish the practice of his profession, and whilst he felt called on to state that if elected he was not prepared to make such a sacrifice, he hoped it would not be con-

sidered uncalled for if he made a few observations, to show that Anatomy and Physiology could be best taught by a teacher of practical knowledge, and he trusted that as the result of the observations to which he referred, his being engaged in the active practice of his profession, to which he was ardently attached, would not be regarded as any disqualification. The Resolution of the Board referred to in the advertisement was that dated 1st February, 1868, by which existing interests were expressly saved.

19. Your Petitioner, in his candidature, never formed, conveyed, or expressed any intention of resigning his office of Physician to the Richmond, Whitworth, and Hardwicke Hospitals; and, until after his re-election, nothing whatever was conveyed to him by any of the electors calculated to remove the impression upon his mind that, if re-elected, his existing interests would remain unaffected as before, and he believed that this was also the intention of the electors, all of whom were fully aware that the Resolution referred to in the notice was that of 1st February, 1868, and that your Petitioner held the other office for his life.

20. The duties of the Professorship, and of the office of Physician to the other Hospitals, are not inconsistent. The time and hours of attendance may be, and always have been, so arranged as not to interfere with each other. The duties are the same as they have been for fourteen years past, during which your Petitioner has held both offices. Many of the most distinguished and successful Professors in the Medical School of Trinity College have held office as Physicians or Surgeons in various Hospitals in Dublin. The Medical School, during your Petitioner's Professorship, has been yearly increasing in numbers and in efficiency, and your Petitioner challenges inquiry into the mode in which he has performed the duties of his Professorship while holding the other office.

21. On October 19, 1872, the election was adjourned to October 26, 1872; and on October 24, 1872, the Board passed the following Resolution:—

"SPECIAL MEETING OF BOARD.

"Board-room, *October* 24, 1872.

"Resolved —

"1. That a Professorship of Comparative Anatomy be created, the Professorship to be partly endowed from the fees of the Dissecting-room.

"2. That the Professor shall deliver a course of at least forty Lectures in Comparative Anatomy, which shall be free to all Students having their names on the College Books; and that the course of eighteen Lectures in that subject, heretofore delivered by the Professor of Anatomy and Chirurgery, shall be discontinued.

"3. That the Professor of Comparative Anatomy shall attend two hours daily in the Dissecting-room, and that the fees of the Dissecting-room heretofore receivable by the Professor of Anatomy and Chirurgery shall be divided equally between the two Professors.

"4. That the Professor of Comparative Anatomy shall receive £100 a-year from the College funds."

Your Petitioner submits these Resolutions were *ultra vires*, and in any case that they were an alteration of the emoluments of the Professorship which could not be fairly or lawfully made at any time without the consent of the Professor.

22. On 21st October, 1872, copies of proposed Resolutions to the same effect were given to the University Professors, including your Petitioner, for their observations; and by letter dated October 22nd, your Petitioner stated his objections to them.

23. Your Petitioner was, on October 26th, 1872, duly re-elected by the Provost and Senior Fellows, and by letter of that date he was informed by the Registrar that he had been re-elected to the office of Professor of Anatomy and Chirurgery.

24. By letter dated November 9, 1872, the Registrar stated to your Petitioner that the Board had desired him to call your Petitioner's attention to the Resolution of the Board of Feb. 1st, 1868. Except a private verbal communication after his re-election, this was the first intimation to your Petitioner of any intention to require his resignation of the office of Physician to the Richmond, Whitworth, and Hardwicke Hospitals.

25. By letter, addressed to the Provost and Senior Fellows, dated November 14, 1872, your Petitioner referred to the supposed reasons for adopting the Resolution, and to the circumstances under which his services at Sir Patrick Dun's Hospital had been dispensed with, and submitted that as he was prevented from resuming the duties of that appointment by the conduct of the Governors, who, without notice, and without affording him any opportunity of defending himself, had required his removal, and as the Board had declined to grant him the inquiry which he demanded, he should be allowed to resign the appointment of Clinical Surgeon to Sir Patrick Dun's Hospital, which would,

he trusted, be regarded as a compliance with the spirit of the Resolution of February 1st, 1868.

26. By letter dated November 16, 1872, the Registrar informed your Petitioner that the Board, having reference to the provisions of the School of Physic Act, 40 George III., considered it the duty of the Professor of Anatomy to deliver Clinical Lectures in Sir Patrick Dun's Hospital, and that the Board also considered that under the joint resolutions of the College of Physicians and the University, and the terms of the advertisement for the Professorship, they could not sanction the attendance at the Whitworth Hospital.

27. By letter dated November 20, 1872, your Petitioner again stated, in the strongest terms, the difficulties in the way of his again undertaking Clinical duties at Sir Patrick Dun's Hospital, and begged the Board to accept his resignation of the office of Surgeon to it.

28. By letter dated November 23, 1872, the Registrar informed your Petitioner that the Board desired him to say that your Petitioner should cease to be connected with the Whitworth Hospital before he could be fully admitted to the Professorship, for which it was necessary that he should take the declaration prescribed by the Act of 40 George III., and they also desired him to say that until then they could not consider your Petitioner's application.

29. Until the receipt of that letter your Petitioner had never been asked to take the declaration now substituted for the oath prescribed by the Act of George III. He had not been given any opportunity of attending before the Provost or Vice-Provost to take it, which he always was and still is ready to do, but from the time of his election he had been and still is performing all the duties of the Professorship except the attendance at Sir Patrick Dun's, the period for which attendance had not and has not yet in proper rotation arrived; and in the public advertisements of the arrangements of the Board for the Medical School during the present session, and in every other way, your Petitioner had always been, from the time of his re-election, recognised as the Professor of Anatomy and Chirurgery.

30. By letter dated November 28, 1872, your Petitioner stated that the Board having, for the first time, raised a legal question, he was unable to reply without further consideration, and he then consulted counsel as to his rights. Having received an opinion, dated December 5, 1872, he, by letter of the same day, transmitted a full copy of it to the Board, first asking to be

allowed to attend before the Provost to make the necessary declaration, and further stating that though he had never questioned that he was *de jure* bound to attend Sir Patrick Dun's, still he felt that in being obliged to return while the Resolution of October, 1868, remained unrescinded, and the inquiry so often demanded remained ungranted, he was compelled to submit to a slight from which he might have expected the Board to protect him, at least so far as to secure him an investigation of his conduct, but that the Board would understand that though he earnestly desired that his attendance should be dispensed with, he was ready to do his duty to the best of his ability. With reference to the Whitworth Hospital he submitted that, for the reasons already referred to, he was not bound to resign his connexion with it, but that it seemed specially unreasonable to require that he should give up that position while the question as to his admission to the Professorship was stated to remain open, and when the result of the demand might be to leave him neither Hospital nor Professorship. He stated that he would gladly, as a concession, entertain a proposal to give up all Clinical teaching and its emoluments at the Whitworth, if the other difficulties of his position were first fairly dealt with by the Board, but that he could not be expected to surrender the office he held for life, while his position in the other was still unsettled. He also called attention to the opinion he had received as to the proposed division of the dissecting fees, and stated that, while most unwilling to raise any difficulty, he held himself at liberty to claim the full proportion of fees to which he was legally entitled, and declined to authorize any alteration in the distribution of them.

31. The only reply or further communication which your Petitioner has received from the Board is a letter from the Registrar, dated December 24th, 1872, enclosing the following Resolution:—

"*Board Meeting, December 24th*, 1872.

"The Provost and Senior Fellows of Trinity College having taken into consideration a communication from Benjamin M'Dowel, M. D., Professor of Anatomy and Chirurgery, in reference to his holding the office of Physician in the Whitworth Hospital, and being advised that his doing so is a violation of the order dated the 1st day of July, 1868, and also of the conditions upon which he was elected to the said Professorship on the 26th day of October last, it is this day ordered by the Provost and Senior Fellows that the said Benjamin M'Dowel do, within fourteen days from this date, December 24, 1872, resign his

appointment in the said Whitworth Hospital, and any other Hospital in which he holds any appointment, except Sir Patrick Dun's Hospital; and should he refuse or neglect to do so within the time aforesaid, such measures shall be taken as may be necessary to enforce compliance with this order.

"And it is further ordered that a copy of this Resolution be communicated to Dr. M'Dowel.

"JOHN TOLEKEN, *Registrar*."

32. Your Petitioner submits that he is not bound to obey the admonition contained in the said letter, or to resign his appointment in the Whitworth Hospital, on the following grounds:

1st—That the Resolution of February 1st, 1868, was and is *ultra vires* and void, and is not a reasonable rule or order to regulate the conduct of a University Professor.

2nd—That your Petitioner's existing appointment is not affected thereby by reason of the saving clause annexed thereto.

3rd—That under the terms of your Petitioner's re-election, while holding that office, and without any previous stipulation that he should resign it, he cannot now be required to do so.

4th—That it is most unjust and unreasonable to require him to resign that office while his title to his Professorship is disputed, and the emoluments of the office are unsettled.

33. Your Petitioner further submits that the Resolutions of October 24th, 1872, diminishing the emoluments of the Professorship by appropriating a portion of the fees for dissections to another Professorship are *ultra vires*, illegal and void, on the following grounds:—

1st—That the said fees are by law payable to the Professor of Anatomy and Chirurgery, and cannot be appropriated to any other person without his consent.

2nd—That the Provost and Senior Fellows have no power over the said fees, except to regulate the same.

3rd—That having regard to the terms of the notice of election, the Provost and Senior Fellows had no power to adopt those Resolutions so as to affect the emoluments of the Professorship during its present period.

34. Your Petitioner lastly submits that, until the questions as to the validity of the Resolutions of October 24, 1872, are determined, he cannot be justly called upon to resign another office, until the duties and emoluments of the Professorship shall have been legally ascertained.

PRAYER

1. MAY it therefore please your Lordships to reverse the said order of admonition contained in the Resolution of the Provost and Senior Fellows of Trinity College, Dublin, dated 24th December, 1872, and to declare that, notwithstanding the said admonition, your Petitioner, as Professor of Anatomy and Chirurgery, is not bound to resign the appointment therein mentioned; and that if he refuse to do so, he shall not be held to be wilfully neglecting the performance of the duties of his Professorship.

2. That your Lordships in your discretion will appoint and hold a Visitation in the said College to inquire into the matters aforesaid, and to declare that the said Resolutions of February 1, 1868, and of October 24, 1872, and of December 24, 1872, and every of them, are *ultra vires* and void, and otherwise to determine all doubts, questions, disputes, and differences relating to your Petitioner's election to the said Professorship, and the duties and emoluments thereof.

3. Or, if it shall to your Lordships seem convenient, that the doubts, questions, disputes, and differences aforesaid, may be heard and determined by your Lordships, in such other manner and form as, in accordance with the Charter and Statutes of the University, and with the concurrence of the Provost and Senior Fellows, shall to your Lordships seem proper, or for such other direction, declaration, or order as to your Lordships shall seem meet, and your Petitioner will ever pray.

BENJAMIN GEORGE M'DOWEL.
HENRY C. KIRKPATRICK.
GERALD FITZGIBBON, Jun., Q.C.

PELHAM J. MAYNE,
*Solicitor for the Petitioner,*
16, *North Great George's-street, Dublin.*

# ANSWER

*Of the Provost and Senior Fellows of Trinity College, Dublin, to the Petition of Appeal in this Matter.*

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1. In the year 1785 was passed, by the Irish Parliament, an Act for establishing a complete School of Physic in this kingdom (25 Geo. 3, chap. 42), but, for many years previously, three Lectureships for the teaching of Anatomy and Surgery, Chemistry and Botany, had been established in Trinity College, called in the said Act the University of Ireland, by the Provost and Senior Fellows of the said College, and were supported out of the funds of the said College, and the said Lecturers were Officers, and under the control of the said Provost and Senior Fellows, as the governing body of the said College or University.

2. By sect. 13 of the Act of the 40 Geo. 3, chap. 84, in the first paragraph of the Petition of Appeal mentioned, after reciting that by an Act passed in the 25th year of the reign of His Majesty King George III. (being the Act hereinbefore mentioned), it was enacted that there should be three Professors in the University of Dublin, who should be called University Professors, that is to say, a professor of Anatomy and Chirurgery, a Professor of Chemistry, and a Professor of Botany; and that the then present Lecturers in the said several branches should be constituted and appointed Professors in the said several branches respectively, It was enacted that the said University Professors should have perpetual continuance and succession, and should be elected as therein mentioned, and (sect. 14) should be supported at the expense of the said University.

3. By sect. 23 of the said Act of 40 Geo. 3, chap. 84, it was enacted that every Professorship mentioned in the Act should become vacant at the end of every seventh year from the date of the Election; provided always that it should be lawful for the then present Professors in Chemistry and Botany, in Trinity College, Dublin, to hold the said University Professorships during their respective good behaviour, being the tenure of their

then present Professorships: provided further (sect. 24), that it should be lawful for the Provost, or, in his absence, the Vice-Provost and Senior Fellows of Trinity College, with respect to the University Professors, if they should judge it fit so to do, to direct that the said Professors, or any of them, should continue to hold their Professorship or Professorships for another term of seven years after the expiration of the term for which he or they were elected, provided that such notice should be given of such their direction as is therein mentioned; and (sect. 25), at the expiration of every seventh year, every Professor, whose Professorship should then become vacant, might become a Candidate for the same, or any other of the said Professorships, and should be capable of being elected thereto.

4. By sect. 27 of the same Act, it was enacted that in case the President, or, in his absence, the Vice-President and College of Physicians should, at any time, disapprove of any of the rules and orders made (under sect. 26), by the Provost and Senior Fellows, and redress should not be given in ten days after complaint thereof made to the said Provost, or, in his absence, the Vice-Provost and Senior Fellows, that in every such case the said President, or Vice-President and College of Physicians, might prefer their complaint to the Visitors of Trinity College, Dublin, who should summarily hear the matter of complaint, and grant redress in case the same should appear to them to be well-founded, and if otherwise should dismiss the same.

5. The only duties appointed for the Professors under the said Act are to attend the Hospital, afterwards called and known as Sir Patrick Dun's Hospital, and to deliver certain Clinical and Professorial Lectures; and the only fees to which the said Professors are entitled thereunder are the fees for Clinical Lectures, regulated by sect. 11 of the said Act, and under sect. 33 reasonable fees for the Professorial Lectures; such last-mentioned fees to be from time to time regulated in respect of the said University Professors by the Provost and Senior Fellows of Trinity College, Dublin.

6. We admit the several statements contained in paragraphs 2, 4, 5 of the said Petition.

7. We believe that the statements contained in paragraph 3 are correct; but we do not know what are the duties to be performed by the Petitioner as Physician in the said Hospital, nor the rules and regulations respecting the discharge of such duties.

8. As to paragraph 6 of the said Petition, we admit that the Professor is entitled, under the said Act of the 40 Geo. 3, chap. 84, to the fees payable for Clinical Lectures, and also to fees

payable for attending Professorial Lectures; and that he is also entitled under the same Statute to be supported at the expense of the University, and we say that a fixed salary of £200 per annum has been allotted to him out of the funds of the College for such support; and we further admit that he was, until the time hereinafter mentioned, permitted to receive the surplus of the fees paid by Students attending Demonstrations and Dissections, after payment of the expenses of the School; but we deny that he had any right to such last-mentioned fees, except such as arose from arrangement and contract between him and the Provost and Senior Fellows of the said College; and we further say, that in consideration of being allowed to receive such fees, the said Professor undertook the duty of superintending the said Dissecting-room and Demonstrations, and also took part in such Dissections and Demonstrations and in the instruction of the Students attending the same; and such duties were wholly distinct from any duties to be performed by him under the said Act of the 40 Geo. 3, chap. 84, and the said fees so allowed to be received by the said Professors in consideration of the performance of such duties and services are not fees mentioned in or authorised to be taken under the said Act.

9. For a long series of years there has existed in Trinity College a building appropriated to the purposes of Dissections and Demonstrations. This building was erected at the expense of the College, and has been maintained partly out of the College funds and partly out of Students' fees; and large sums of money have been expended by the College in its erection, enlargement, improvement, and maintenance. It is not subject to the provisions of the said Act, and has always been regulated by rules and orders from time to time made by the said Provost and Senior Fellows, as the governing body of Trinity College, and not under or by virtue of any authority given to them by the said Act; and the said Provost and Senior Fellows have also nominated and appointed the Professor and the University Anatomist to attend in such Dissecting-room, and Demonstrations, and generally exercised control over the same, although, in making such rules and regulations, and in the appointment of such Lecturers and Officers, they may have consulted the Professor of Anatomy.

10. By a Resolution, dated the 18th May, 1861, the said Provost and Senior Fellows made the following rules, in relation to the said Dissecting-room and fees:—

"It is Resolved, on the recommendation of the Professor of Anatomy, with the concurrence of Mr. Barton and Mr.

Bennett, that the following regulations shall be of force until the year 1865, when Dr. M'Dowel's term of office as Professor of Anatomy will expire:—

"'1. The Board appoint Mr. Barton University Lecturer in Practical Anatomy, and Mr. Bennett Assistant Lecturer.

"'2. In the event of either of these offices becoming vacant, before the period above alluded to, the Professor shall recommend to the Board a fit and proper person or persons to succeed to the vacant office or offices.

"'3. The pecuniary arrangements now in force between the Professor, Mr. Barton, and Mr. Bennett, shall continue during the residue of Dr. M'Dowel's term of office—no change to be made without the consent of the parties, and the approbation of the Board.

"'4. At the termination of Dr. M'Dowel's term of office, in 1865, the Board shall be at liberty to make new regulations for the Professorship, and to re-appoint or not any or all of the gentlemen holding the above-mentioned offices.'

"The Board agree to adopt the foregoing Resolutions, as recommended to them; but the Professor of Anatomy must be still held responsible for the efficiency of the instructions given in the Dissecting-room, and it will be his duty to report any negligence to the Board."

11. Several other rules and regulations for the conduct and management of the Dissecting-room were from time to time made by the Provost and Senior Fellows; and, on the 3rd day of July, 1865, a Committee, which had been previously appointed by the Provost and Senior Fellows, laid before them certain suggestions for the management of the Dissecting-room, which had been furnished to the said Committee by the Petitioner, Dr. M'Dowel. The said Provost and Senior Fellows always reserved to themselves, as the governing body of the said College, full power to alter from time to time, as occasion might require, all such rules and regulations, and also to control and deal with the fees payable for attendance in such Dissecting-rooms and for Demonstrations, and in respect of all other matters which were not regulated and prescribed by the said Act of 40 of Geo. 3, chap. 84.

12. In addition to the emoluments mentioned in paragraph 6

of the said Petition, the Provost and Senior Fellows also pay to the Professor the sum of £50 per annum, in consideration of his granting to Arts' Students the privilege of attending a Second Course of Lectures free.

13. The Petitioner's term of office as Professor of Anatomy and Chirurgery expired on the 9th day of October, 1865, and he was then continued in office for a further term of seven years, pursuant to the provisions of section 24 of the said Act. The following is the entry in the Registrar's Book of such re-election or continuance in office:—

> "Benjamin M'Dowel, Esq., M.D., was re-elected Professor of Anatomy, the Board reserving the usual powers of directing the arrangements of the School; and Dr. Bennett (Edward) to the office of University Anatomist."

14. Previously to the said re-election or continuance in office of the said Petitioner, there was an express understanding between the Provost and Senior Fellows and the Petitioner, that the Petitioner would attend for two hours daily in the Dissecting-room, and, further, that the Petitioner and the said Dr. Edward Bennett should each receive one-half of the fees paid for Dissections and Demonstrations, after deducting all expenses.

15. The office of University Anatomist in Trinity College was in existence in the year 1716. The Provost and Senior Fellows, for the time being, always exercised the power of electing and of dismissing this officer. He was never appointed by the Professor of Anatomy.

16. We admit the several statements contained in paragraphs 7, 8, 9, in the said Petition.

17. The system of allowing Medical Hospital Teachers to hold appointments in more than one Clinical Hospital in Dublin, at the same time, existed in and before the year 1867, in four Hospitals in Dublin. These were the Mater Misericordiæ Hospital, the Jervis-street Infirmary, the House of Industry Hospitals, consisting of the Hardwicke, Whitworth, and Richmond Hospitals, and Sir Patrick Dun's Hospital. This system was detrimental to the interests as well of the Medical Students as of the Patients in the several Hospitals, and it interfered with the due and regular discharge of their duties by the Medical Officers. It was abolished in the Mater Misericordiæ Hospital, and the Jervis-street Infirmary, about the year 1867, by the establishment of a regulation that no Medical Officer of these Institutions should hold at the same time an appointment as Medical Officer in any other Clinical Hospital. A similar rule

was shortly after adopted in the House of Industry Hospital, and was acted upon by the governing body of that Institution, who, on the election by them of a Medical gentleman to the office of Clinical Surgery in the said Hospital, imposed upon him the condition that he should give up the office which he then held of Surgeon to another Hospital; and the Provost and Senior Fellows of Trinity College, acting upon a similar rule, prohibited the University Anatomist from seeking for the office of Surgeon to the Meath Hospital, he being a Surgeon of Sir Patrick Dun's Hospital at the same time. The said Provost and Senior Fellows then passed the Resolution of the 1st February, 1868, referred to in paragraph 10 of the said Petition. The following is the rule or regulation adopted and entered on the Register of the College:—

> "Resolved, that, in future, no University Professor in the School of Physic shall be allowed to hold an appointment as Medical Officer to any Clinical Hospital other than that of Sir Patrick Dun. N.B.—This rule not to affect existing arrangements."

The said rule was duly communicated by the Registrar of Trinity College to the Registrar of the College of Physicians, and was by him laid before the last-named College, which approved of the same, and made a similar rule to regulate the conduct and duty of the King's Professors. The rule so made by the said College of Physicians was subsequently acted upon by them in the year 1869; and Dr. William Moore, who was then elected by them to the office of Professor of the Practice of Medicine in Sir Patrick Dun's Hospital, was required, in pursuance of the said rule, to resign the office of Clinical Physician to Mercer's Hospital, which he then held, and which said last-mentioned appointment he then, accordingly, resigned.

18. We submit that the clause or addendum in the said Resolution of the 1st of February, 1868, referring to the rule as not interfering with existing arrangements, means only, as in fact it was intended to mean, that the then Professor of Anatomy and of Surgery, who had been continued in his office for another seven years, from the 9th of October, 1865, at which period no such rule was in existence, should not, during his then tenure of such Professorship, be affected by such rule; and that it has no relation to the interests, or alleged interests, of the Petitioner, as stated in paragraph 11 of the said Petition.

19. As to paragraph 12 of the said Petition, we say that the Provost and Senior Fellows at all times claimed and asserted a

right to regulate all fees, except such as were directed and regulated by the said Act of the 40 Geo. 3, chap. 84, and that they exercised such right in the year 1865, as before mentioned, when the surplus fees payable for the Dissecting-room and Demonstrations were divided between the Petitioner and Dr. Bennett, the University Anatomist.

20. As to the allegations contained in paragraphs 13 and 14 of the said Petition, we say that the Provost and Senior Fellows were only actuated by a sense of duty in taking the proceedings therein referred to; and we are advised and submit that the said several matters are wholly irrelevant; and that, on the new election of the Petitioner to the Professorship of Anatomy, on the 26th day of October, 1872, he became liable to all the duties imposed by the Act of the 40 Geo. 3, chap. 84; and that the several Resolutions and matters referred to in the said paragraphs ceased to have any operation; and that, if the Petitioner objected on any grounds to perform the said duties, he should not have offered himself as a candidate for election.

21. We admit the statements and matters contained in paragraph 17 of the said Petition—previously to the publication of the advertisement of the 2nd of July, 1872. It was officially communicated to the Petitioner, by the Provost and Senior Fellows, on the 22nd of June, 1872, that the term of his then Professorship would expire on the 14th day of October, 1872.

22. We admit that the Petitioner did offer himself for new election, and did make a printed application, as stated in paragraph 18 of the said Petition; and did thereby object to relinquish the practice of his Profession, but there was no allusion made by him in reference to his continuing to hold his appointment as Physician to the Richmond, Whitworth, and Hardwicke Hospitals. Nor did he then, or at any time before his election, make any objection to the condition in that behalf contained in the said advertisement. The Petitioner erroneously states, in the said paragraph, that existing *interests* were saved by the Resolution of 1st of February, 1868.

23. We admit, as stated in paragraph 19 of the said Petition, that the Petitioner never, to our knowledge, information, or belief, conveyed or expressed, during his candidature, any intention of resigning his said office of Physician to the said Hospitals, and we know not, and, therefore, cannot say whether he ever formed any such intention. We also believe that no intimation upon the subject was conveyed to him by any of the electors. The Provost and Senior Fellows always considered that such an intimation was clearly conveyed and expressed by the terms of

the said advertisement, which, in calling attention to the rule, omitted all reference to any saving either of existing interests or existing arrangements; and if the impression did exist in the Petitioner's mind, that, if re-elected, any supposed existing interests of his would remain unaffected as before, we say that the said Provost and Senior Fellows never gave any grounds for any such impression; and any such intimation would have prejudiced most unfairly other candidates for the office, who might hold other appointments, and to whom no such intimation was made; and we say it was the intention and belief of the said Provost and Senior Fellows, who were the Electors, that all candidates for the said appointment should and would accept the same upon, and be bound by, the conditions set forth in the said advertisement.

24. As to paragraph 20 of the said Petition, we say that we do not concur in several of the statements therein contained; on the contrary, we believe that such a plurality of offices as is involved in the same Medical Officer, holding at the same time similar appointments in different Hospitals, is most injurious to the interests of the Hospitals and of the Patients and the Pupils attending each such Hospital; and we refer to the matters already stated in support of this belief.

25. We admit the Resolutions of the 24th of October, 1872, stated in paragraph 21 of the said Petition. We deny that such Resolutions were *ultra vires;* they were solely conversant with arrangements which were not within the Act of the 40 Geo. 3, chap. 84, and which were, as we submit, under the entire control of the Provost and Senior Fellows, and within their authority; and we further submit, that the said Provost and Senior Fellows were justified in making the alterations as to the fees of the Dissecting-rooms, contained in the said Resolutions, without the consent of the Professor of Anatomy; and we say that the Professorship of Anatomy was vacant at the time of the passing of the said Resolutions; and further, that there is no jurisdiction conferred upon, or power given to the Visitors, under the said Act of the 40 of Geo. 3, chap. 84, to inquire into or decide upon the validity or invalidity of the said Resolutions and arrangements.

26. We admit, as stated in paragraph 22 of the said Petition, that, on the 21st of October, 1872, copies of proposed Resolutions were given to the University Professors and to the Petitioner, for their observations—such proposed Resolutions varying in no material respect from those adopted, subsequently, on the 24th October; and they were given to the Petitioner and the

other Candidates, with the view of ascertaining whether, notwithstanding the passing of the said Resolutions, they would still continue their candidature, which they did.

27. We admit the receipt of the letter of the Petitioner of the 22nd of October, 1872, referred to in the said 22nd paragraph ; and we say that the Petitioner did not in the said letter, nor at all prior to the said election, object to the validity of the said Resolutions, or deny the jurisdiction and power of the said Provost and Senior Fellows to make and pass the same ; nor did he state, or give the said Provost and Senior Fellows to understand, that if elected he would not hold himself bound to comply with them ; and, on the contrary, the said Provost and Senior Fellows, when they elected the Petitioner to the said Professorship, believed that he would comply with and acquiesce in the terms and conditions set forth in the said advertisement and in the said Resolutions of the 24th October, 1872 ; and they would not have elected him to the said office if they knew or believed that he would not comply therewith.

28. We admit the statements contained in paragraph 23 of the said Petition.

29. As to paragraph 24, we say and submit that the terms of the said advertisement were a plain intimation and notice to Petitioner that he would be required to resign the office of Physician to the said Hospitals; and we say and submit that the fact of the Petitioner having become a candidate for the said appointment after the publication of the said advertisement, and of his having continued such candidature without intimating to the said Provost and Senior Fellows an intention on his part not to comply with the terms of it if he was elected, created an implied contract, on his part, that if he was elected he would resign his appointment in the said Hospitals, and that he should not now be allowed to act in breach of such contract.

30. We admit the several statements contained in paragraphs 25, 26, 27 of the said Petition.

31. As to paragraph 28 of the said Petition, we admit that the Board of Trinity College, that is to say, the said Provost and Senior Fellows, did intimate to the Petitioner that he should take the statutory declaration, and that they did convey, or intend to convey to him, that he was bound to comply with the Resolution which was embodied in the said advertisement; and that accordingly he should cease to be connected with the Whitworth Hospital, and that they would not waive their right to insist upon his fulfilling the conditions upon which he had been elected.

32. As to paragraph 29 of the said Petition, we say and submit that it was the duty of the Petitioner to make the said declaration immediately after, and upon the day he was elected to the said office, and that he never sought to make the same until the 5th day of December, 1872, after the receipt of counsel's opinion.

33. We admit the receipt of the letters of the Petitioner, dated respectively the 28th of November and 5th of December, 1872, as stated in paragraph 30 of the said Petition.

34. We admit the statements contained in paragraph 31 of the said Petition, and we say that the Resolution of 24th December, 1872, therein set forth, was never intended by the said Provost and Senior Fellows to be an admonition within the meaning of the Act of 40 Geo. 3, chap. 84, and we submit that in law it ought not to be viewed as such; and that, upon the true construction of it, the intention that it should not be accepted and treated, and was not intended, as an admonition under the said Act, plainly appears; and we submit that the Visitors have no jurisdiction or power under the said Act to adjudicate upon it, and that it is competent for the said Provost and Senior Fellows, if such Resolution shall not be obeyed by the Petitioner, to proceed, either by admonition or in any other manner, as they may be advised.

35. We further say and submit that the Resolutions of the 1st of February, 1868, and the 24th day of December, 1872, are not, nor is either of them, illegal or *ultra vires.*

Signed, by order of the Provost and Senior Fellows,

JOHN TOLEKEN,
*Registrar.*

# COPY CORRESPONDENCE

*Between the Board of Trinity College and B. G. M'Dowel, M.D.*

*Trinity College, June* 22, 1872.

Dear M'Dowel,—I suppose that you are aware that the Professorship of Anatomy becomes vacant on October 14 next.

The Board have appointed October 19 for holding a new election. Ever yours, &c.

John Toleken.

*To the* Provost *and* Board *of* Senior Fellows *of Trinity College, Dublin.*

*September*, 1872.

Rev. Sirs and Gentlemen,—I beg to offer myself for re-election to the Professorship of Anatomy and Chirurgery in the University of Dublin; and in doing so rest my claims for your support on the progressive improvement of the Anatomical Classes in the Medical School of the University, since the time of my first appointment, and the present prosperous condition of the School, the Anatomy Class of which is now, and has for some time been, the largest in Dublin.

When you did me the honor to elect me in 1858, the Class of Anatomy in Trinity College had been for several years a very small one, the smallest of any in the Medical Schools of Dublin in existence at that time. For the seven Medical Sessions prior to 1858, the average number of Dissectors was 49, and in the year 1856–57 was as low as 31. In the Session 1858–59, the first since my appointment, the number of students entered for Dissections was 43, whilst the same number attended my first Course of Lectures on Anatomy.

The non-recognition of the Certificates of the Professors of Trinity College, for several years previously, had, no doubt, reduced its School to this low ebb; and unless so injurious a restriction had been removed, no great augmentation of its Class could have been hoped for: yet I beg to direct your attention to the fact that in my second Session, the circumstances of the School as to recognition remaining the same, the Professor's Class of Anatomy numbered 58, showing an increase over the previous year of 15, and the Dissecting Class was 62, being an increase of 19.

In the month of January, 1860, the mutual recognition of the Lectures of the Professors of the School of the College of

Surgeons, and of the School of Physic, was completed, and in the Session 1860–61, the Anatomy Class of Trinity College was 95, and the Dissectors numbered 102. The numbers in attendance in these departments during the first seven years of my Professorship are here subjoined:—

| Session. | No. of Pupils entered for Professor's Course of Anatomy. | No. of Pupils entered for Dissections. |
|---|---|---|
| 1858–59 | 43 | 43 |
| 1859–60 | 58 | 62 |
| 1860–61 | 95 | 102 |
| 1861–62 | 108 | 120 |
| 1862–63 | 92 | 107 |
| 1863–64 | 90 | 110 |
| 1864–65 | 93 | 119 |

The Class of 1861–62 was exceptionally large, because in that year the system of perpetual Pupils was first adopted, and a large number availed themselves of the reduction of Fees which was granted to those paying in advance. This system was introduced into the School of Trinity College, in order that its Pupils might have the same privileges as regarded Fees as those of other Schools, but, not being approved of by the Board, was abolished in 1864. It thus appears that during the seven years ending in 1865, the average number attending the Course of the Professor of Anatomy was 82·71; whilst the average number of Dissectors for the same period was 94.

In October, 1865, you did me the honour to re-elect me, and the Anatomical Classes have since then steadily increased. The following Table gives the numbers who attended the Lectures of the Professor of Anatomy and of the Dissecting Class in each Session from 1865–66 to 1871–72 inclusive.

| Session. | No. of Pupils entered for Professor's Course of Anatomy. | No. of Pupils entered for Dissections and Demonstrations. |
|---|---|---|
| 1865–66 | 115 | 150 |
| 1866–67 | 102 | 162 |
| 1867–68 | 126 | 188 |
| 1868–69 | 127 | 202 |
| 1869–70 | 116 | 183 |
| 1870–71 | 117 | 201 |
| 1871–72 | 129 | 203 |

The average number of the Professor's Class for the second seven years of my Professorship, as shown by this return, is therefore 118·85, as compared with 82·71 in the first seven years, and the average number of Dissectors for the same time, 184, as compared with 94 for the first seven years.

In 1865, shortly before my re-election, a Committee of the Tutors made a statement to the Board, containing some recommendations as to the Medical School, in which this observation occurs: " The progress of the Anatomical Department of Trinity College can in future have no other measure than the zeal and ability of the Professor who may be placed at its head." I accept the test as a fair and reasonable one, and feel therefore that I may dwell with pardonable pride on this result, that the Class of Anatomy of Trinity College, which in the first year of my appointment was the smallest in Dublin, is now, and has been for many years, the largest, whilst the Professor's Class, which in 1858–59 consisted of 43 Students, had increased in 1871–72 to 129 Students, being the largest Class of any of the fourteen Winter Sessions during which I discharged the duties of Professor of Anatomy.

It may be said that the School of Trinity College owes its prosperity to the removal of the restrictions which existed up to the year 1860. No doubt these restrictions operated most injuriously on the School, and prevented the development of its Classes; but it is equally certain that when all the Medical Schools in Dublin were placed on the same footing, as to their recognition by the Licensing Bodies, the development of the Class became a criterion of the efficiency of each Institution, and I feel, therefore, that I have a right to claim the remarkable and progressive development of the Class of Anatomy in the School of Trinity College, from the time of my first appointment up to the present, as evidence of the efficiency with which the Anatomical Department of Trinity College has been conducted.

It is gratifying to me to be able to state that my Lectures have always been well attended, and that the Pupils have invariably been attentive and well conducted. I attribute this in a great degree to the practical nature of my Lectures; for whilst Scientific Anatomy has always received its due share of notice I have earnestly endeavoured to connect the Science of Anatomy with the practice of Medicine and Surgery; and whatever success I may have had as a Lecturer is, I believe, owing to my constantly seeking to make the study of Anatomy attractive, by connecting it with the exigencies and requirements of every-day practice.

The announcement of the approaching election for the Professorship contains in some instances an addendum, intimating that the Board of Trinity College will give a preference to a candidate who will relinquish the practice of his profession. Whilst I feel called on to state that, if elected, I am not prepared to make such a sacrifice, I hope it will not be considered uncalled for, if I make a few observations on this subject. As the result of extensive inquiries, I find that Oxford, which has no complete Medical School, is the only place in Great Britain or Ireland in which a Professor of Anatomy is prohibited from taking private practice. If, in any other place, the Professor of Anatomy does not engage in practice, it is merely from choice, and not the result of any restriction or rule. The Professorship of Anatomy in Trinity College was always intended to be a practical Chair. It is the Professorship of Anatomy and Chirurgery; and although the Professor has been long released from the duty of delivering Lectures on Systematic Surgery, he has recently been called on to deliver Lectures on Clinical Surgery, and to undertake the duties of Surgeon to Sir P. Dun's Hospital,—duties which would be quite inconsistent with a relinquishment of private practice. Besides, it must be admitted that those who have been most eminent in the profession as Anatomists and Physiologists have also been distinguished as practical Surgeons and Physicians. This, which was true of Harvey and the Hunters, has continued to be the rule to the present day; and in London, Sir Astley Cooper, Brodie, Todd, Bowman, Marshall Hall, and Brown Sequard; and in Dublin, Dease, Abraham Colles, Charles H. Todd, Kirby, Harrison, Graves, and Adams, were no less eminent as practical Surgeons and Physicians than as teachers of Anatomy and Physiology. I have no hesitation in stating the general opinion, amongst those best qualified to form one, to be, that Anatomy and Physiology can be best taught by a teacher whose practical knowledge can be made available to point out how these sciences can be brought to bear most directly on the treatment of disease, and on the elucidation of morbid phenomena.

I trust, therefore, that my being engaged in the active practice of my profession, to which I am ardently attached, will not be regarded as any disqualification; and should the Board of Trinity College, in consideration of my past services and the continuous success of the Anatomical Department of the School, do me the honour again to appoint me, I shall feel called on in return to devote all my energies to the discharge of the duties entrusted to me, and to seek by every means in my power to

maintain and promote the high reputation of the Medical School of the University of Dublin.

I have the honour to remain,
Your obedient Servant,
Benjamin George M'Dowel.

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*October* 19, 1872.

Dear M'Dowel,—The election for the Professorship of Anatomy has been deferred until next Saturday. The Board have under consideration the question of appropriating a portion of the Fees to providing for education in comparative Anatomy.

Yours faithfully,
John Toleken.

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*October* 21, 1872.

Dear M'Dowel,—I enclose communication from the Medical Registrar, which I have been desired to send you for your observations.

It has been proposed to found a second Professorship in the School to deliver forty Lectures in Comparative Anatomy, the present eighteen Lectures being given up, the Professorship to be partly endowed from the emoluments of the present Professorship.

It has been proposed that the new Professor should attend two hours in the Dissecting-room, and receive two-thirds of the Fees.

Yours ever,
J. Toleken.

The Provost was unable to attend at the Board, which prevented the proposals being definitely agreed to.

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5, Merrion-square, South,
*October* 22, 1872.

My dear Dr. Toleken,—In reply to your note, enclosing a communication from the Medical Registrar, and asking me for my observations thereon, I beg to say that there are some inaccuracies in the estimate given by the Medical Registrar of the "available income" of the Professor of Anatomy in the present

state of the School. I shall notice the items *seriatim*, premising that the Medical Registrar has omitted one, viz., the Fees for Examinations.

1st, Salary fixed at £250; 2nd, Lecture Fees set down at £350. This is wholly inaccurate. The average of the last three years has been from this source £226 8*s.*; the average number of *paying* pupils being very nearly what he mentions, 72 instead of 74; but the Professor is only paid for *one Course*, the second being free; 3rd, Clinical Fees are set down hypothetically at £100. Dr. Bennett has favoured me with a return of these for the last three years, which I enclose, the average being £32.

The charge brought against the Clinical Staff, of deficient energy and zeal, does not apply to me, as I have not been connected with the Hospital during this period.

4th, The Dissecting Fees, as taken from the Bursar's book, is of course correct, viz., about £400.

The result, therefore, should be:—

| | |
|---|---|
| 1. Salary, . . . . | £250 |
| 2. Lecture Fees (average), . | 226 |
| 3. Clinical Fees (do.), . | 32 |
| 4. Dissecting Fees, . . | 400 |
| 5. Examination Fees, . . | 15 |
| | £923 |

When I stated to you, the other day, that my Income as Professor had never reached £900 a year, you will see I was correct, as not having received Clinical Fees for three years; the sum of £32, if deducted, would leave my income at £891.

I remain, dear Dr. Toleken,

Yours very faithfully,

B. M'Dowel.

Dr. Toleken,

*Registrar, T. C. D.*

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5, Merrion-square, South.

*October* 23, 1872.

My dear Dr. Toleken,—The Vice-Provost has handed me a series of propositions to be considered by the Board, and has intimated to me that I am at liberty to make any remarks I may wish thereon. I shall do so very briefly, omitting all details.

I am of opinion that there is no necessity to appoint another Professor of Anatomy. The Professor of Anatomy and Chirurgery, the University Anatomist, and the Staff of Demonstrators have always provided for ample instruction in Practical Anatomy in the Dissecting-room. The cordial unanimity which has always existed between the Professor and the University Anatomist has contributed much to the success of the Anatomical Department, which the appointment by the Board of another Professor would disturb. The Demonstrators have always been selected with much care by the Professor and the Anatomist from amongst the Medical Graduates who have been distinguished for their abilities, good conduct, and aptitude for teaching; the result has been that the Demonstrators in the School of Trinity College are, and have, as a body, been unrivalled as teachers of Practical Anatomy, and these appointments are virtually higher prizes to which Students of the School may aspire after graduating in Medicine and Surgery. A great wrong, therefore, will be done to these gentlemen (and to the Students of the School generally), if a gentleman who was not educated in the School is not only appointed, but placed in a position of rank and emolument far above theirs. The only reason assigned in these propositions for creating a new Professorship, viz., to provide a place of emolument for the Professor of Zoology, does not appear to be a sufficient one. There can be no objection to a Professorship of Comparative Anatomy, and to its being properly endowed by the University, and by a deduction from the Lecture Fees of the Professor of Anatomy; but it would be wrong in principle to allocate any of the Dissecting Fees to provide for the teaching of Comparative Anatomy.

Any alteration in the allocation of the Fees which would increase the Salaries of the Demonstrators would be a just recognition of the value of their services.

I remain, dear Dr. Toleken,

Yours very faithfully,

B. M'Dowel.

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*October* 26, 1872.

My dear M'Dowel,—You have been re-elected to the office of Professorship of Anatomy.

Yours faithfully,

John Toleken.

39, Trinity College,
*November* 9, 1872.

My dear M'Dowel,—The Board have desired me to call your attention to the Resolution of February 1, 1868, viz., that in future no University Professor in the School of Physic shall be allowed to hold an appointment as Medical Officer to any Clinical Hospital other than that of Sir P. Dun.

N. B.—This rule not to affect existing interests.

The Resolution was passed jointly with a similar one by the College of Physicians.

Yours faithfully,
John Toleken.

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5, Merrion-square, South.
*November* 15, 1872.

Rev. Sirs and Gentlemen,—Dr. Toleken has written to me by your directions, to call my attention to a Resolution adopted by the Board of Trinity College, February 1, 1868.

I believe that I am correct in assuming that this Resolution, which was concurred in by the King and Queen's College of Physicians, was adopted, chiefly and primarily, to prevent any University Professor from holding *in future* the appointment of Medical Officer in two Clinical Hospitals, and was promulgated on the occasion of an application having been made by Dr. Bennett, one of the Clinical Surgeons of Sir P. Dun's Hospital, to be allowed to become a candidate for a Surgeoncy in another Hospital. I beg to observe, when I was appointed Clinical Surgeon to Sir P. Dun's Hospital, in accordance with the provisions of the Amended School of Physic Act, I had been for twenty years Clinical Physician to the Whitworth and Hardwicke Hospitals, an appointment conferred on me for life by the Government in 1846. By my recent election to the Professorship of Anatomy I am, I presume, *de jure*, Clinical Surgeon to Sir Patrick Dun's Hospital, although by a Resolution of the Board of Trinity College, of October 9, 1869, my services as such were dispensed with. But I submit that I am prevented from resuming the duties of this appointment by the conduct of the Governors of Sir Patrick Dun's Hospital, who, without any notice, and without affording me any opportunity of defending myself, passed the following Resolution on September 8, 1869, which, from its vagueness, reflects the more injuriously on my character:

"Resolved,—That the Governors of Sir Patrick Dun's Hospital are of opinion that it is necessary for the interests of the Hospital that the Provost and Senior Fellows of Trinity College

use the powers entrusted to them by sec. 4 of the School of Physic Amendment Act, 30 Vic., and dispensed with the attend ance of Dr. M'Dowel at the Hospital during the remainder of his tenure of the Professorship of Anatomy, and appoint another Surgeon in his stead, to attend to the Hospital, and deliver Clinical Lectures therein."

I will now only remind the Board that on three several occasions, viz., on September 29th, October 8th, and October 21st, I demanded a full and searching inquiry into whatever charges might be preferred against me by the Governors of Sir Patrick Dun's Hospital, which they declined to grant. Under these circumstances, I beg to resign into your hands the appointment of Clinical Surgeon to Sir Patrick Dun's Hospital, which will, I trust, be regarded as a compliance with the spirit of the Resolution of the Board, of February 1st, 1868, and the acceptance of which will certainly be in accordance with the liberal spirit evinced by the University, which now throws open its places of honour and emolument to all, without any restrictions whatsoever.

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2, Longford-terrace,
*November* 16*th*, 1872.

My dear M'Dowel,—The Board desires me to say, that having reference to the provisions of the School of Physic Act, 40 Geo. 3, they consider that it is the duty of the Professor of Anatomy to deliver Clinical Lectures in Sir P. Dun's Hospital. The Board also considers that, under the joint Resolutions of the College of Physicians and the University, and the terms of the advertisement for the Professorship, they cannot sanction the attendance at the Whitworth Hospital.

I am, yours faithfully,
John Toleken, *Registrar*, T. C. D.

Benj. G. M'Dowel, Esq., M. D., &c.

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5, Merrion-square, South,
*November* 22*nd*, 1872.

My dear Dr. Toleken,—In reply to your communication of November 16th, in which you state that "having reference to the provisions of the School of Physic Act, 40 Geo. 3, the Board consider that it is the duty of the Professor of Anatomy to deliver Clinical Lectures in Sir P. Dun's Hospital," I beg to

state that although my election to the Professorship of Anatomy has at the same time reinstated me, according to law, in the office of Surgeon to Sir P. Dun's Hospital, yet it has not altered the fact that I had been previously removed from that office by a Resolution of the Governors, which declared that it was "necessary for the interests of the Institution" that I should be so removed, and that this Resolution was accepted by the Board of Trinity College, and a substitute appointed.

It is needless to point out that this fact raises difficulties in the way of my again undertaking the Clinical duties at that Hospital, which can scarcely be surmounted.

I could not expect to discharge them with satisfaction to the Governors, who have already pronounced their sentence, a sentence of which there is no ground for expecting the reversal; for no inquiry into the justice of it, such as I sought, has ever been instituted, nor could I undertake them with any regard to my own self-respect, as a gentleman and a man of honor. To undertake an office for which I have been pronounced unfit, and with that censure still resting upon me, is what I cannot do, and which I do not think I should be called on to do.

In this I only express sentiments with which honorable men must sympathize, and which I am convinced the Board of Trinity College will not disregard or disapprove of.

I have been elected to my Professorship with the full knowledge in the minds of the Electors, that I could not, and that I could not be expected to, act as Surgeon to Sir Patrick Dun's Hospital, except to the disadvantage of the Institution (as expressed by the Authorities). This being so, I beg to direct attention to the fact, that whilst the School of Physic Act (40 Geo. 3) requires the Professor of Anatomy to deliver Clinical Lectures in Sir P. Dun's Hospital, the fourth section of the Amended School of Physic Act (30 Vic.) gives the Board of Trinity College full powers to dispense with such duty. I submit, therefore, that there is no legal difficulty in the way of the acceptance by the Board of my resignation of the office of Surgeon to Sir P. Dun's Hospital; and that for them to insist on my filling a post from which I have been thus removed, and which I could not now fill with honor, satisfaction, or usefulness, cannot fail to be regarded as an act of unreasonable and unnecessary harshness.

I remain, my dear Dr. Toleken, with great respect,
Yours respectfully,

B. G. M'Dowel.

*November* 23, 1872.

Dear M'Dowel,—The Board desire me to say, that you should cease to be connected with the Whitworth Hospital before you can be fully admitted to the Professorship, for which it is necessary that you should take the declaration prescribed by the 40 Geo. 3.

They also desire me to say that they cannot until then consider your present application.

Yours faithfully,

John Toleken,
*Registrar.*

B. M'Dowel, Esq., M. D., &c.

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5, Merrion-square, South,
*November* 28, 1872.

My dear Dr. Toleken,—As in your letter of November 23rd, the Board has, for the first time, raised a legal question, I feel unable to reply without longer consideration, but hope to do so in a few days. The declaration you refer to is, I presume, the oath which the Provost or Vice-Provost is respectively "required to administer," immediately after the Professor has been declared duly elected.

I remain, with great respect,
Yours very faithfully,

B. M'Dowel.

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5, Merrion-square, South,
*December* 6, 1872.

My dear Dr. Toleken,—When I found by your letter of the 23rd November, that a question was raised as to my being fully admitted to the Professorship of Anatomy, I thought it better to ask legal advice as to my position. Being most anxious to avoid anything in the nature of a Visitation, or to appear hostile to the Board, and desiring to act in the most open way, I send you the full copy of the opinion which I have received, and will feel obliged by your laying it before the Board. As to the declaration of office, I am ready to make it at any moment, and

will ask you to let me know when it will suit the Provost's convenience that I should attend for the purpose. You are aware that, since my election, I have been performing all the duties of the Professorship, and that I have not been asked to make the declaration, nor am I in any way responsible for its omission.

The first substantial matter which has been the subject of our correspondence is, as to my acceptance of Clinical duty at Sir Patrick Dun's Hotpital. I have never questioned that I am "*de jure*" bound to attend there; but I feel that in being obliged to return, while the Resolution of October, 1868, remains unrescinded, and the inquiry so demanded remains ungranted, I am compelled to submit to a slight from which I would have expected that the Board which appointed me would have protected me, at least so far as to secure me an investigation of my conduct. You will, however, understand that though I earnestly desire that my attendance should be dispensed with, I am ready to do my duty to the best of my ability.

With reference to the Whitworth Hospital, I submit that I am not bound to resign my connexion with it. I was re-elected to the Professorship in October, with full knowledge that I held the other office for life, and that my *interest* in it was existing ever since 1846. No communication was made to me of the expectation that I should resign, and at the time of my election I had no idea that I was expected to do so. Existing interests were expressly saved in 1868, and the demand now made seems inconsistent with the Resolution then adopted. It seems especially unreasonable to require that I should give up this position while a question as to my admission to the Professorship is stated to remain open, and the result of the demand might be to leave me without either Hospital or Professorship. I will gladly, as a concession, entertain a proposal to give up all Clinical teaching and its emoluments at the Whitworth, if the other difficulties of my position are first fairly dealt with by the Board; but I cannot be expected to surrender the office I hold for life while my position in the other is as unsettled as your letter suggests that the Board considers it to be.

I have to call the attention of the Board to the opinion I have received as to the proposed division of the Dissecting fees. While on this point also I would be most unwilling to raise any difficulty in the way of establishing the new Professorship, I must hold myself at liberty to claim the full proportion of fees to which I am legally entitled, in case it should unfortunately happen that no amicable arrangement can be made; and you will understand that in the meantime I do not authorise any alteration

in the distribution of the fees. I sincerely hope that, with your kind assistance, and that of the Board, it may not be necessary to submit either of the questions which have arisen to the Visitors; and repeating the assurance that I am ready to make any reasonable sacrifice to avoid such a course, which, however, I must take if no other remains,

I remain, my dear Dr. Toleken, with much respect,
Yours very faithfully,

B. M'Dowel.

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*December* 24, 1872.

My dear M'Dowel,—I enclose a Resolution passed to-day by the Board.

Yours faithfully,
John Toleken.

Benjn. M'Dowel, Esq., M.D.

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Board Meeting,

*December* 24, 1872.

The Provost and Senior Fellows of Trinity College having taken into consideration a communication from Benjamin M'Dowel, M.D., Professor of Anatomy and Chirurgery, in reference to his holding the office of Physician in the Whitworth Hospital, and being advised that his doing so is a violation of the Order, dated the 1st day of July, 1868, and also of the conditions upon which he was elected to the said Professorship on the 26th day of October last; it is this day ordered by the Provost and Senior Fellows that the said Benjamin M'Dowel do, within fourteen days from this date, December 24, 1872, resign his appointment in the said Whitworth Hospital, and any other Hospital in which he holds any appointment, except Sir Patrick Dun's Hospital; and should he refuse or neglect to do so within the time aforesaid, such measures shall be taken as may be necessary to enforce compliance with this Order.

And it is further ordered that a copy of this Resolution be communicated to Dr. M'Dowel.

John Toleken, *Registrar.*

# PROCEEDINGS.

## MONDAY, 3RD OF FEBRUARY, 1873.

THE Court sat at 11 o'Clock, A. M.

*Mr. John H. Nunn*, Solicitor to Trinity College, read the Precept for the Visitation, of which the following is a copy:—

"Whereas the Provost and Senior Fellows of the College of the Holy and Undivided Trinity of Queen Elizabeth, near Dublin, have by virtue, of the power in that behalf conferred upon them by the Statutes of the College, called upon us, the Right Honourable Sir Joseph Napier, Bart., Vice-Chancellor of the University of Dublin (the Chancellor being absent), and the Right Honourable and Most Rev. Richard Chevenix, Lord Archbishop of Dublin, Visitors of the said College, to hold a Visitation thereof:

"Now we, the said Visitors of the said College, hereby give Notice that we will visit the said College on Monday, the 3rd day of February next at the hour of 11 o'Clock in the forenoon of said day, and we hereby require the Provost, Fellows, and Scholars and other members of the said College to attend before us, that we may inquire into all such questions, matters and controversies as may be brought before us, and determine the same according to the Laws and Statutes of the said College, and as to justice and the well-being of the College shall appertain.

"In witness whereof we have hereunto subscribed our names and titles of honour, this 25th day of January, 1873.

"JOSEPH NAPIER,
"*Vice-Chancellor of the University*,
"(*The Chancellor being absent.*)
"RICHARD C. DUBLIN, *Visitor*."

Vice-Chancellor.—This Visitation has been convened on he request of the Board of the College. The letter of Request of the Board refers to the Appeal that has been lodged by Dr. M'Dowel, and requests the Visitors to hold a General Visitation, so as to enable them to determine the questions in dispute. I believe that no notice of any other business except that in connexion with the Appeal, has been given, so that it will not be necessary to order "a Call" of all the Members of the College. This Visitation has been ordered, as subsidiary to the settlement of matters that might happen to arise. The proper course will be, to open the Appeal of Dr. M'Dowel, and we shall be enabled to determine, as the investigation proceeds, whether we shall interfere in reference to any other business. The Appeal mainly arises under the Statute applicable to the School of Physic; but if any matter should arise that may so require, we shall use the powers we possess under a General Visitation. I thought the question on the Appeal might be disposed of without the formality of a General Visitation, but occasion may arise for using our full powers.

*Dr. Ball.*—There is no question for your consideration, except that which has been raised by Dr. M'Dowel; and the object of having a General Visitation was to convene those persons who would have power to decide anything that might happen to present itself for their inquiry.

*Mr. Butt, Q. C.*—The Petition of Dr. M'Dowel, for whom I appear, complains of an order or admonition made by the Board upon the 24th December, 1872; he has stated that this is an admonition under the 40th of George III. The Board appear to say that it is not an admonition, but an order, and that, therefore, the Appeal given by the Statute does not lie. An admonition is the first step to a removal, and an Appeal is given by the Statute against that admonition. But even if it be not an admonition, if it is an order, it is in the power of the Visitors, under their general authority, to examine into its validity; and this would, in any event, be by far the most convenient course; for if it is treated as an order, the Board, to enforce it, would be obliged to resort to an admonition. An Appeal admittedly lies against that admonition; and on that Appeal Dr. M'Dowel could contest the validity of the order. This was probably one of the reasons that induced the Board of Trinity College to ask for a General Visitation. It seems, therefore, unnecessary to determine whether this be an admonition or an order. If it be an admonition, we appeal against it under the Statute; if an order, to the ordinary jurisdiction of the Visitors. Upon the 24th

December, 1872, the Board made the order upon Dr. M'Dowel to resign his office in the Whitworth Hospital; he treats this as an admonition; the Statute gives the Appeal against an admonition; the Board are disposed to regard it as an order; the effect of disobedience would be that admonition, and the Appeal would come against it; but under a General Visitation, the Visitors could direct Dr. M'Dowel to obey the order, or they could cancel it, if it were an improper order. Therefore, we are rid of any technical objection; and whether it is an order or an admonition, the propriety of the rule may be considered, and you, as a domestic tribunal, can determine whether Dr. M'Dowel shall discontinue his attendance at the Whitworth Hospital. It is, as I have said, probable that this consideration influenced the Board to ask for a General Visitation, so that you will have Dr. M'Dowel before you, and you will thus be enabled to make an order that shall prove most conducive to the interests of the College. This makes every thing plain, and removes all technical points. The question, therefore is, have the Board the power to insist upon Dr. M'Dowel withdrawing from the Whitworth Hospital? If they have, of course he must resign, or obey the order, but the Visitors may decide that the Board had not any power to make such an order. The facts of the case are uncontroverted. Dr. M'Dowel was originally appointed Professor of Anatomy and Chirurgery upon the death of Dr. Harrison.

Vice-Chancellor.—Do you contend that, independently of the Act of 40 Geo. III., we have jurisdiction to inquire into the matter?

*Mr. Butt.*—I think so. If the order can be made by the Board, regulating the duty of the Professor, the Visitors, considering the peculiar nature of this domestic tribunal, have the power to come to a decision on the subject; at all events, I shall say on behalf of Dr. M'Dowel, that whatever may be the conclusion at which you arrive, he is prepared to abide by it. If it be an admonition under the Statute, we have a Statutable Appeal; but independently of this, the Visitors may investigate anything that may be going wrong in the Institution; and if they find that one of the Professors is disobeying the order of the Board, they can require him to obey that order, and this decree would be followed by an admonition; but what I mean to urge is, that the Visitorial authority would be convoked and brought into operation at a much more convenient stage than in any other way, if brought into activity before the Professor was made subject to contumacy; and I think it would be more respectful to

the Board that this should be treated as an inquiry, whether the order was such as should have been made, all parties being ready to submit to the Visitorial authority. In the year 1858 the University Professorship of Anatomy and Chirurgery having become vacant by the death of Dr. Harrison, Dr. M'Dowel was elected to the office; he held the appointment of Physician to the Richmond, Whitworth, and Hardwicke Hospitals, and was a Clinical Lecturer there, and likewise gave Medical Clinical instruction in Sir Patrick Dun's Hospital. These things he put forward in his statement to the Board on making the application, as a strong recommendation for nominating him to the office he sought. In 1865, on the expiration of his first period of office, Dr. M'Dowel was re-appointed Professor.

VICE-CHANCELLOR.—He was "continued" in office. There is a difference between being continued and re-elected.

*Mr. Butt.*—There is so. He was re-appointed; there was not a new election. So matters remained till the year 1868. I do not know whether it will be necessary for me to trouble you with matters in reference to complaints that he had not attended in his capacity of Clinical Instructor at Sir Patrick Dun's Hospital?

VICE-CHANCELLOR.—It is desirable that this matter should be cleared up; but it is not relevant to the present inquiry.

*Mr. Butt.*—It is the interest and the duty of Dr. M'Dowel that everything relating to his conduct and position should be before the Visitors. At the same time I may observe, that his supercession upon a former occasion as Clinical Lecturer at the Richmond Hospital does not affect him in future; unless the Board interfere to prevent him from lecturing, he goes on; but it would be far better that the Visitors should now intimate to him an opinion as to what he should do in this particular, as to his continuing to receive the fees for giving Clinical instruction in Sir Patrick Dun's Hospital. As to this matter he is quite ready to abide even by a statement of what the opinion of the Visitors is on the subject.

*Dr. Ball.*—It is better now to inquire into the other parts of the case. The real point has reference to the re-disposition of the Fees. The Statute regulates that he must go to the Hospital. The two matters of difficulty in the case are, the rule in reference to the Whitworth Hospital and the re-disposition of the Fees. The other matter can be arranged.

*Mr. Butt.*—This matter about Sir Patrick Dun's Hospital involves curious questions, and I would be glad that they were before the Visitors; I am desirous that the whole case shall be

before them. Dr. M'Dowel has no reason to shrink from any inquiry; and he feels, as I do, that there is no tribunal which is better fitted than the Visitors, being a mixed Court, combining legal knowledge with the characteristics of a domestic tribunal, to decide these questions. The first point to which we have to direct our attention is, to the Resolutions entered into by the Board on the 1st of February, 1868, while Dr. M'Dowel was a Medical Officer of the Richmond Hospital, which office he held from 1846, for life The Resolutions are as follow:—"Resolved—That in future no University Professor in the School of Physic shall be allowed to hold an appointment as Medical Officer to any Clinical Hospital, other than that of Sir Patrick Dun's. N. B.—This rule not to affect existing interests." It was printed "existing arrangements."

Vice-Chancellor.—It is so in the "University Calendar."

*Mr. Butt.*—I do not think it will make any difference; but there is a mistake as to this matter; it will not, however, affect the case one way or the other. On the 14th October, 1872, the Professorship became vacant. There is no doubt that before that time the Board had caused an advertisement to be inserted in a great number of newspapers, giving notice in accordance with the Act of Parliament, that the Professorship would become vacant on a certain day. In that notice the emoluments and advantages of the Professorship are enumerated; and the Board also set forth that "By a Resolution of the Provost and Senior Fellows, no University Professor in the School of Physic can hold an appointment as Medical Officer to any Clinical Hospital, other than that of Sir Patrick Dun." They gave Dr. M'Dowel the notice. I need not go minutely through the facts; there was at the end of this a statement that "a preference would be given in the election to those who would agree to give up their private practice."

Vice-Chancellor.—This notification is not in any paper that is before us.

*Mr. Butt.*—It was in the "Medical Gazette," and to some other of the notices it was also annexed.

Vice-Chancellor.—That would be very wrong.

*Dr. Battersby.*—Nothing in the case will turn upon it?

*Mr. Butt.*—I think not. Dr. M'Dowel, in his application, protested against this, and said that it would be an injurious thing to the Professorship to act upon such a narrow principle.

*Dr. Ball.*—He wrote an able letter on the subject to the Board.

Vice-Chancellor.—This passage has not been printed in the "Gazette."

*Mr. Butt.*—No; it has not.

*Dr. Ball.*—I do not believe that this notification was contained in any advertisement emanating from the College.

*Mr. Butt.*—It was.

*Dr. Ball.*—It was in a Medical Journal; but I do not know whether it was or was not in the advertisement.

*Mr. Butt.*—I had in my hand this morning a Medical Journal, which contained an advertisement at the foot of which this announcement appears.

Vice-Chancellor.—I do not think that anything will turn upon this matter.

*Mr. Butt.*—Except that the fact furnishes a good test as to the legality of the electors being influenced by anything but the qualifications of the candidate. The Board might say, "We elected you upon the faith of your giving up your private practice." We say, "The Statute binds you not to give preference to any one;" and this circumstance may be a test to decide the legality of this matter. There are two ways in which this resolution might come before you; one that it is a positive, legal resolution, binding upon Dr. M'Dowel; the other, that it is a contract, and that having been elected upon the faith of it, he should observe it. There is not a shadow of ground for saying that there was a contract. The Resolution does not take the form of a contract, but in the notice there is this intimation—"A preference will be given to those who give up their private practice." If Dr. M'Dowel said that he was willing to comply with this proposition, this might amount to a contract. Even if this were so, although it could not be enforced by his removal from the office, we should like to know from the Visitors, whether Dr. M'Dowel was bound to act on this as an honourable engagement?

It will be necessary for me to go back to the history of the School of Physic in Dublin. That School, connected as it is with the University, is not however exclusively a University Institution. It is partly attached to that University, and partly to Sir Patrick Dun's Hospital; and even in speaking of that Hospital, we are falling almost into a mistake, because the original Institution, according to the founder's will, was to be a School of Physic, and to it an Hospital was attached to supply Clinical instruction to the Students. The Statute that gives a complete history of the Professorships of Sir Patrick Dun, is an Act of the Irish Parliament, the 25th of Geo. III., ch. 42.

It is the first Statute that unites the College with the School of Physic. There had been three Lecturers in Trinity College. I have not been able to trace how these first began. They are the Lectureships of Anatomy and Surgery, Chemistry and Botany. The Statute begins by reciting, "Whereas an Act was made in this Kingdom in the 21st year of his late Majesty King George II., entitled 'An Act for Vacating of the office of the King's Professor of Physic in Dublin, upon the death or surrender of the present King's Professor, and for erecting three Professorships of Physic in the said City instead thereof.'" This was an Act relating to Sir Patrick Dun's Hospital. The history of the early Institution of the School of Physic will be found in documents compiled and printed by the University Press in the year 1867. The record begins with the will of Sir Patrick Dun. That will is dated the 24th of June, 1713. He left several sums of money, secured by a deed bearing date the 8th of June, 1704. In that deed there are the words, "I declare that it is my desire and intention to make provision for one or two Professors of Physic, to read Public Lectures, and make Public Anatomical Dissections of the several parts of human bodies or bodies of other animals; to read Lectures of Osteology, Bandage and Operations of Chirurgery; to read Botanic Lectures, demonstrate Plants publicly, and to read Public Lectures on *Materia Medica*, for the instruction of Students of Physic, Surgery and Pharmacy." Then comes a Charter granted in the second year of the reign of George I., constituting the Professor "the King's Professor of Physic in the City of Dublin." An Act passed in the 15th year of George II. (1741), "An Act for vacating the office of the King's Professor of Physic in Dublin, upon the death or surrender of the present King's Professor, and for erecting three Professorships of Physic in the said city instead thereof." In this are recited the deed and will of Sir Patrick Dun, the Charter, and a great many other things; and the Statute then goes on to say—"And whereas some of the branches of Physic appointed by the said Sir Patrick Dun in his aforesaid recited deed or instrument, for subjects of the said Professors' Lectures, are now treated of in Lectures instituted in Trinity College, Dublin, since the death of the said Sir Patrick Dun, so that the good and charitable intentions of the said Sir Patrick Dun, for providing for the instruction of Students of Physic, Surgery and Pharmacy, will be more effectually answered, and the public good more promoted, by dividing on the next vacancy on the death or surrender of the said Dr. James Grattan, the said King's Professorship of Physic in the City of Dublin, into three Professorships,

viz.: a Professorship of the Theory and Practice of Physic, a Professorship of Surgery and Midwifery, and a Professorship of Ancient and Modern Pharmacy, and the *Materia Medica;* but this alteration cannot be accomplished without the aid and assistance of an Act of Parliament. Wherefore, at the humble suit of the said President of the King and Queen's College of Physicians in Ireland, and of Dr. James Grattan, King's Professor of Physic in the City of Dublin." All this was to be in connexion with the College: the Professors were simply upon the foundation of Sir Patrick Dun. Up to that time there is no such thing as a School of Physic, combined of the Professors of the College and the Professors of Sir Patrick Dun's. There is a hint of it, and it is not improbable that between that period and the Statute of 1785, there was, by a voluntary arrangement, some connexion between the Lecturers in the College and the Professors of Sir Patrick Dun; that is, that the same Students attended the Lectures; however, we have not any means of knowing, if there were such a connexion, that it was recognized by Statutable enactment. In the interim, Acts of Parliament were passed, enabling the trustees of Sir Patrick Dun to have an Hospital for the delivery of Clinical Lectures. Then comes the Act of 1785, though it was repealed by the 40th of George III. ch. 84 (A.D. 1800), and I read this more for its history than anything else. It begins by reciting the Act of the 15th George II., and then enacts that instead of three Professorships, four Professors of Medicine, Materia Medica, Pharmacy, and Natural History, shall be appointed. These four Professors were unconnected with the College; they were not University Professors, but were connected with Sir Patrick Dun's Hospital. The University, however, had a voice in nominating a certain number of Lecturers.

VICE-CHANCELLOR.—They had not any duties to discharge in College.

*Mr. Butt.*—They had duties in the School of Physic, which is, by the Act, connected with the College. The 8th section of the Act is as follows:—"And whereas, three Lectureships have been, many years since, established in the University of this kingdom for the teaching of Anatomy and Surgery, Chemistry and Botany, be it enacted by the authority aforesaid, that there shall be three Professors in the University of this kingdom, which shall be called 'University Professors;' that is to say, a Professor of Anatomy and Surgery, a Professor of Chemistry, and a Professor of Botany, which said University Professors shall have perpetual continuance and succession, and shall be elected in the

manner, for the time, and subject to the regulations hereinafter mentioned."

VICE-CHANCELLOR.—Does not that section constitute them a Corporation?

*Mr. Butt.*—That occurred to me also; they were to have a perpetual succession, and be elected, and subject to certain regulations. Three University Professors were elected by the Provost and Senior Fellows of the College; the Professors of Sir Patrick Dun's were elected by a mixed body, chosen by the College of Physicians and Trinity College, and these had power to regulate the duties of the King's Professor.

VICE-CHANCELLOR.—It was to be a kind of joint management.

*Mr. Butt.*—Though the College of Physcians could act on the election, the Board of Trinity College could regulate the Professorship with them, and, in either case, there was an appeal from the adjudication.

*Mr. G. Fitzgibbon.*—The Visitors made the necessary regulations.

*Mr. Butt.*—If the College objected to the appointment of the four King's Professors who were on the foundation of Sir Patrick Dun, there was an appeal; still it established a joint system of management, each body having a veto upon the acts of the other. Now come their duties. We must now turn to the 40th George III. ch. 84. A provision having been made for the salary of the King's Professor, the 4th section goes on to say, "It shall and may be lawful for the President and Fellows of the said College of Physicians, with the consent of the Chancellor of Trinity College, or, in his absence, the Vice-Chancellor, the Archbishop of Dublin, the Provost of Trinity College, &c., to apply a sum not exceeding £150, out of the said annual surplus, as ground rent for a lot of ground on which an Hospital, wherein Clinical Lectures shall be given, may be erected, and also to apply the residue of the said surplus (after certain payments) to the building of such Hospital." So that you will perceive I was correct in stating that Sir Patrick Dun's Hospital was established as an adjunct to the School of Physic, contemplated by his will, and that the school gradually grew till, from one Professor, the number was augmented to four, and these four Professors were associated with the complete School of Physic. It was to be a complete school, and was united into an institution of these dimensions, by the Statutes of 1741, 1785, and 1800, bringing the Professors of Trinity College and the King's Professors upon the foundation of Sir Patrick Dun, seven Professors in all con-

stituting the School of Physic. The 11th section of the 40th George III. is to the following effect:—"And be it enacted, by the authority aforesaid, that the said King's Professors and their successors shall read and give Clinical Lectures upon the patients in the said Hospital, at least two days in each week during every Session, without any further allowance for the same, out of the issues and profits of the said Sir Patrick Dun's, than their aforesaid yearly salaries of £100 each; and that the said King's Professors and the University Professors, hereinafter mentioned, shall read such Lectures during the space of three months, in alternate succession as has been heretofore practised, or in such other order as they shall agree upon amongst themselves; and that every pupil who shall attend the said Lectures shall pay to the Professor whose Lectures he shall attend the sum of three guineas for each three months' course of Lectures." This is the duty imposed upon seven Professors—to give Clinical Lectures, in rotation, in Sir Patrick Dun's Hospital, and to receive a fee of three guineas from each Student, and with this fee the College has no right to interfere, it being a Statutable fee. Then comes the 21st section, which confers the power of continuing the Professor. The general opinion has been, that the continuance of the Professor in the office, without calling upon new candidates to offer themselves, can be exercised once only in the instance of each Professor. So that Dr. M'Dowel, having been re-appointed in 1865, he could not be re-appointed without competition in 1872. This would turn upon a very curious point; it is not very important, because the Board have not done it, but the provision I have read from the other Statute is re-enacted. Then comes the 28th section:—"And be it enacted, by the authority aforesaid, that if any Professor shall wilfully neglect to perform the duty of his Professorship, it shall and may be lawful to and for the electors of the King's Professors, in case of the said Professors, and to and for the Provost and Senior Fellows of Trinity College, Dublin, in case of the University Professors, to admonish the said Professors, and, in case of obstinate neglect of duty after such admonition, to deprive the said Professor of his Professorship." Then follows the 29th section:—"Provided always, and be it enacted, by the authority aforesaid, that it shall and may be lawful, to and for any Professor so ordered, as aforesaid, to be admonished or deprived, to appeal in the case of any of the King's Professors, to the Visitors of the College of Physicians, or any two of them; and in the case of any of the University Professors, to the Visitors of Trinity College, Dublin, as the case may happen, which said appeal shall be lodged in one week after the said

order for admonition or depriving: and it shall and may be lawful for the said Visitors respectively to affirm or reverse the said order, and, on hearing such appeal, to examine witnesses upon oath, which oath the said Visitors respectively are hereby empowered to administer." This is a Statutable appeal, given against admonition and deprivation. It was clearly necessary to insert this section. If the Statute gave the Board a power to dismiss a Professor, and excluded the general power of the Visitors, it might work injustice. They exercised Statutable functions conferred upon them by the Act; against this the Act annexes a right of appeal, but it does not take away the right of the Visitors to their general control of the Institution. This has been treated as an admonition, but I do not think that as such it can be maintained, because what is spoken of in the Act is the wilful neglect to perform the duties of the Professorship; this would be, in the present case, a forced construction, unless it can be shown that the order made it a part of the duty of Dr. M'Dowel to resign his position at the Richmond Hospital.

Vice-Chancellor.—As a University Professor, *simpliciter*, he is subject to the order of the Board, but otherwise, you say, it comes under the Statute.

*Mr. Butt.*—We are submitting to your jurisdiction, as general Visitors—and treating this as an order, we want to see whether the Board had the power to make such an order? The 30th section of the Act is very curious. It is of importance to show that the School of Physic was recognized by both Institutions, and consisted of Professors of the College of Physicians and Professors of the University, each being subject to the authority of its own body. I wish now to call attention to a clause which appears to me to be very important. The 20th section runs thus:—"And be it enacted, by the authority aforesaid, that the said Professorships of the Institutes of Medicine, of the Practice of Medicine, of the Materia Medica and Pharmacy, and of Midwifery, on the foundation of Sir Patrick Dun, shall be open to persons of all nations, professing their faith in Christ, and the said Professorships of the University of Dublin, to Protestants of all nations, provided they shall have taken Medical Degrees, or shall have obtained a license to practise from the said College of Physicians, in consequence of a *testimonium* under the seal of Trinity College, Dublin." This is a declaration that the Professorships shall be open—one office open to all Christians, qualified in a certain way, the other to all Protestants; and one of our objections to the order of the Board is, that it limits the number of eligible persons, contrary to the express

directions of the Act of Parliament, and at variance with the general principles of law. A by-law of a Corporation, limiting the number of persons eligible to office by Charter, is bad. You are familiar with the principle. We had it discussed before the Vice-Chancellor, and the College of Physicians, on the occasion of another visitation; but the Statute itself is enough for me. The Statute declares that the Professorships shall be open generally. This principle has been extended by a Statute, passed in the year 1867 (30th Vic. c. 9, s. 1). The following is the enactment [reads passage]. Our first objection to the rule of the Board is, that it is equivalent to saying that any person obtaining a Clinical Lectureship in any Hospital but Sir Patrick Dun's, is disqualified. This is the real effect of the rule; it is the same as if it were said, "No one holding a Clinical office in Dublin, except in Sir Patrick Dun's Hospital, shall be eligible, until he resigns." Now this could only be done by Legislative enactment. Such a prohibition would, I think, be against the letter of the law; it would clearly be against the spirit, and, if I am right, the rule is wrong, because it limits the number of those persons who are eligible as candidates for the office, and this is contrary to the spirit of the law. It is clearly so in a case of contract, if this case is taken as a matter of contract—that is, the Board say, "We will not elect any man unless he engages to resign the office." Is it not an evasion to say that unless a man undertakes to resign an office he will not be elected? Is it not an act of disability, made upon the authority of the Board of Trinity College, and in opposition to the express words of the Act of Parliament?

Dr. Battersby.—Suppose they said that they would not elect any one to the office unless he resided within a mile of the College?

*Mr. Butt.*—I would take it so. Suppose they said that their Professor should reside within a mile, if they thought it necessary for the discharge of the duties of the office, they might make the distance less. The real test is, does the rule relate to the conduct of the Professor as Professor? The Board might make a rule that he should be in attendance each day, or from six in the morning, subject, of course, to the control of the Visitors, and their opinion as to whether such an attendance was or was not reasonable. Suppose they declared that they would not elect a married man to be a Professor, nor any one who had £300 a year; they might do so just as well as to say the candidate should forfeit his private practice. The real test of the propriety of the rule is, does it affect the conduct of the Professor?

Vice-Chancellor.—Part of your argument would apply to the 26th section of the 40th of George the Third.

*Mr. Butt.*—The 26th section gives power to the two bodies to make rules to regulate the conduct of the King's and University's Professors, provided "they shall not be inconsistent with any of the clauses or directions contained in the Act of Parliament." If the rule could be at all maintained, it would be under that section alone. This section gives a power to regulate the conduct of the Professors, but it means their conduct in their Professorships. If the power to make rules were general in its application, they might say, as I have already remarked, that a candidate who is a married man, or who will not attend church upon a Sunday, would not be elected. There should be a limit to the construction of the rule; and the only question in the case is, does the rule come within the spirit of the Act of Parliament? Can it be said that a rule requiring a person to resign one appointment as a condition to his being elected to another, is within the Statute? Could the Board make a rule that a Fellow should not hold a living outside of Dublin if the Statutes of the College did not prohibit it? Could they do so indirectly by stating that they would not elect to a Fellowship any candidate who would not pledge himself never to take such a living? The real meaning of the provision of the Act of Parliament is, that the conduct to be regulated by the rule is conduct in his office. It is plain that the College of Physicians may object to the rule made; and surely this shows that it must relate to the conduct of the party in his Professorship. To apply a test, whether the holding of the office in the Whitworth Hospital is compatible with the discharge of his duties as a Clinical Professor in Sir Patrick Dun's Hospital, let an order be made that the medical gentleman shall attend at an hour which will clash with his duties at the Whitworth. If he does not, and cannot do this, and the rule is that he must do this, he is guilty of neglect of duty if he does not attend at the hour named. There is not any power in the Board to limit the class of persons who shall be eligible, where the Statute declares that the office shall be open to persons of all nations. Suppose the candidate were a Jew, and the Board made a rule that any person who would not work upon a Saturday should not be elected to the office, would or would not such a rule be contrary to law? Excluding all persons who, from their eminence in their profession, are best qualified to be selected as teachers in medical schools, would be at once to throw these important Professorships into inferior and unsuitable hands. Suppose the Board went further, and said, that no man who was

Physician to Her Majesty the Queen should be elected to the office —unless you adopt the simple test, is such an office calculated to interfere with the due discharge of the duties of the Professorship—there would not be any limit to their power. If it were the case of a surgeon who was required to be at all times in attendance at the Hospital, or the case of a party who was living two or three miles away, I can conceive that the body would have such a power; but, in the present instance, no such power can exist.

VICE-CHANCELLOR.—Suppose the framers of the rule were of opinion that it would conduce to the more efficient discharge of the duties of the Professorship, would that justify them in making the rule?

*Mr. Butt.*—Not, unless it really did so.

VICE-CHANCELLOR.—They have full power whenever there has been a neglect of duty.

*Mr. Butt.*—Is not this a sufficient test?

VICE-CHANCELLOR.—You do not admit that they could proceed upon any theory of their own?

*Mr. Butt.*—No; the matter must be tried upon the question of fact, whether, in point of fact, it would do so.

VICE-CHANCELLOR.—He might neglect his duties in other places, while he discharged them in the College; and it is to this matter that the Board are to look, and see that he duly discharges the trust reposed in him.

*Mr. Butt.*—I would not go the length of saying that the Board could not interfere if there were anything connected with an office held by him, that would be inconsistent with the due discharge of his duties in the College; but there is no charge that it has interfered with his attention to his office there. A man may give Lectures in three places on the same day, and each of the Lectures may be a very good one. The proposition comes simply to this, "Sic volo, sic jubeo, sit pro ratione voluntas." Look at the 21st section of the Act, with the oath of the elector attached—"I do swear that I will, to the best of my judgment and opinion, and without favour, partiality, or prejudice, vote for such Candidate for the vacant Professorships as shall appear to me to be the best qualified for the same." What is the meaning of this "qualification?" It is not the Professor is qualified by any arbitrary rule. It is not like the case of Sir Patrick Dun, who, in his deed, desired that, if qualified, a preference might be given to those who were lineally descended from certain relatives, whom he specified, and after that to the best qualified, without any exception; and the Board are bound

by the Statute to give effect to this preference. How can they say that they would give the preference to a candidate who is prepared to resign his private practice? The oath that I have read shows that the duty of the authorities of the College was to elect the best qualified persons. His ability to discharge the duties committed to him is the matter for their consideration; and unless there is something incompatible with his duty, arising from the office outside the College, no objection can be taken to him as regards his office in the College. I am bound to meet this, not only as a rule, but as a condition imposed upon the candidate before the election. The Board, in their Answer, say—" The said Provost and Senior Fellows, when they elected the Petitioner to the said Professorship, believed that he would comply with and acquiesce in the terms and conditions set forth in the said advertisement, and in the said resolutions of the 24th October, 1872; and they would not have elected him to the said office if they knew or believed that he would not comply therewith." They had no right to impose such a restriction; they were bound to elect the person who was best qualified to discharge the duties of the office. [The learned Counsel here handed to the Court a copy of the *Medical Press*, referred to by him in the opening of his address, in which he stated the words were conjoined with the notice of election to the office of Professor, conveyed by the advertisement, namely, that " a preference would be given to any candidate who gave up his private practice." This notice was likewise, he said, in all the Irish papers].

*Dr. Ball.*—It is well to say that Dr. M'Dowel, in his answer to Mr. Toleken's letter of the 22nd June, 1872, intimating to him that the Professorship of Anatomy would become vacant in October, gives a very fair reason for not relinquishing his private practice. The Board do not appear to have insisted upon the condition alluded to; they considered the letter was a very able one, and admitted the force of the arguments contained in it—that eminent and experienced men would be deterred from offering themselves as candidates for the office, if they were restricted as regards private practice if elected to the Professorship.

*Mr. Butt.*—Treating this as a warning given before the election, for the purpose of deterring candidates from accepting the office, it shows the length to which such a proceeding might be carried. If they had a right to make the rule, could they, I would ask, prohibit a man from taking private practice?

Dr. Battersby.—It would be a different thing if the legality

of the rule were disputed; but if the Board had the power to make a rule that a person who holds an office in the Whitworth Hospital shall not be elected to the College Professorship, is it not a more rational thing to declare that he shall not continue his private practice, if he is elected?

*Mr. Butt.*—I merely test the length to which such a rule might be carried. I know that the Board, as at present constituted, would be incapable of perverting the rule, to the gratification of private and personal feelings; but suppose there were men upon the Board who felt that Dr. M'Dowel was the man of all others who would be chosen by the Board, unless some rule could be devised which would have the effect of excluding him, and accordingly a rule was made that was calculated to have this effect.—I mention this to show how it is possible to frame a rule by means of which the very best men in a profession may be excluded, and that it may be made an instrument of jobbery, or the frustration of justice and public advantage; but the Statute has done this; it has guarded against any such mischievous tendency, it has prescribed the nature of the disqualification, so that no private arrangement of the Board could legally exclude any man, if he were capable of discharging the duties of his office; and so long as he can discharge his duties, the Board cannot introduce any rule to render him disqualified.

Dr. Battersby.—It is no part of the rule; it is merely a suggestion.

*Dr. Ball.*—It intimates that the Board entertain this view.

*Mr. Butt.*—I use the argument merely to show the dangerous extent to which the rule may be pushed; for if you allow private feelings to influence the Board in framing rules, they may frame rules which shall have the effect of excluding some men who are most competent to fill the office.

Vice-Chancellor.—No doubt, the best qualified man is to be elected.

*Mr. Butt.*—It would come to this. If you decide that the law is binding upon Dr. M'Dowel, he must surrender his office at the Whitworth Hospital, or be brought before you for contumacy. It is idle to say that there would not be a power in the Visitors to remove him from the office, therefore this is a binding law. Let us see how it stands. Taking it to be law, and assuming it to be a law made after the election, it is not to regulate the conduct of my client. We offer the evidence of the most distinguished men in the medical profession, that the rule, so far from serving the office of the Professorship, will have a most injurious effect upon it, because it will exclude

practitioners who are most fitted for the office. The Professorship lasts only seven years. You could scarcely ask a medical man to attend without giving him remuneration. I take it that Dr. M'Dowel has been elected, and is bound to obey legal rules; but the rule in the present case is an illegal one, and therefore he is not bound to obey it. Is he, I would ask, bound in any way to obey it? Is he in honour bound to do so? The rule made in 1868 is a strict one:—"Resolved, That in future no University Professor in the School of Physic shall be allowed to hold an appointment as medical officer to any Clinical Hospital other than that of Sir Patrick Dun. N. B.—This rule not to affect existing arrangements." This was the Resolution that was read by Dr. M'Dowel. He then offered himself as a candidate. The Board were aware that he held an office in the Whitworth Hospital; and would it not have been more fair and candid on the part of the Board to intimate to him that they could not re-elect him unless he resigned that office?

Vice-Chancellor.—Are the words in the "Gazette?"

*Mr. Butt.*—The notice is in the "Gazette." There is no reservation of "existing interests." He had at the time the idea that the Board would reappoint him without a new election.

Vice-Chancellor.—They have dropped in the advertisement the words "existing interests."

*Mr. Butt.*—They refer to the old Resolution of the Board; and Dr. M'Dowel would naturally look to the "University Calendar," and find out the Resolution in which the words "existing interests" were omitted. What is the meaning of the words "in future"? Must they not mean future elections?

Vice-Chancellor.—The question is, whether the Resolution has a retrospective application.

*Mr. Butt.*—They say it has not; then it is to apply only to a future election?

Dr. Battersby.—There must be a new appointment at the expiration of the seven years; the previous estate of Dr. M'Dowel only lasted for that period.

*Mr. Butt.*—They make a rule which applies only to a future election; it is not to affect existing interests. Might it not have been an intimation to Dr. M'Dowel that he was not to be affected by the Resolution because he had existing interests, and that there was an inchoate proceeding leading to his reappointment without a re-election? Was he not at liberty to say that the rule did not affect him? A correspondence on this very point takes place. Dr. M'Dowel comments upon the proposition that he

should withdraw from private practice; he does not comment upon the office in the Whitworth Hospital. There is no objection to that at the time on the part of the Board. What is the obligation upon him? I would say that in truth there is not any obligation, because the Board were quite aware that he had the office in the Whitworth Hospital. If they intended to make the retaining of that office a disqualification of Dr. M'Dowel, they should have said to him, "You must bear in mind that, if re-elected, you must surrender the Whitworth Hospital." The election was to take place on the 19th of October, 1872; upon that day they adjourned, and upon the 24th they changed the emoluments of the Professorship. The emoluments were derived from three sources—in form from four: first there was a salary derived from the University (under the Statute); then there were fees received from the pupils, which were also under the Statute, and they could not be applied to any other purpose. After the notice the fees were changed; after the notice they had not any right to change the fees, as the emoluments offered might in a great measure influence the inclinations of candidates. It is a curious thing, that in the interim between the first and second day, when they elected Dr. M'Dowel, and before they passed the Resolution, the Registrar inquired what emoluments were derived by Dr. M'Dowel from the Whitworth Hospital; and as it was expected that he would retain the Hospital, the other fees were altered so as to amount to about the same thing.

VICE-CHANCELLOR.—But they did not alter the terms of the notice in any essential point. Were they to do so, it might avoid the election.

*Mr. Butt* here referred to the "University Calendar." The Professor was entitled to a salary from the University, then to fees payable by the pupils. The Board could regulate the amount; but whatever they fixed as fees, Dr. M'Dowel was entitled to receive. He next received under the Statute three guineas from each Student for Clinical Lectures in Sir Patrick Dun's Hospital; after the original Institution; there was, in addition to the fees for lectures, a further fee for dissection. There were fees incidental to the Professorship, but he had to pay sums out of this amount—the expenses of the School. This course of procedure continued up to the year 1865, when there was a new arrangement, about the time of the second election. It was then arranged "that the Senior Demonstrator should be appointed University Anatomist, continuing to assist the Professor in the School, and receive one-half of the surplus of the fees; and this

arrangement continued until the 1st of February, 1868, during which period the University Professor and the University Anatomist collected the fees, paid the salaries and expenses, and divided the surplus between them." The Board at this time, instead of having a Demonstrator entirely under the control of the Professor of Anatomy, revived an old office, and the fees of the Dissecting Schools were placed partly under the control of the officer so elected, instead of, as formerly, under the control of the Professor. The legality of this proceeding is one of the questions which the Visitors will be called upon to decide. On the 1st of February, 1868, the Board passed the following Resolution—1st. Resolved, that Dr. Bennett (the University Anatomist), be authorized to receive the fees for dissection, and lodge them in Bank to the credit of the Bursar, who will undertake the distribution of the same. 2nd. Resolved, that in future no University Professor in the School of Physic shall be allowed to hold an appointment as medical officer to any Clinical Hospital other than that of Sir Patrick Dun. N. B.—This rule not to affect existing interests."

Vice-Chancellor.—Did the Board alter the terms of the notice in any way prejudicial to the Petitioner, whose rights are measured by the 40th of George III.?

*Mr. Butt.*—They state in their notice (2nd July, 1872), what the emoluments are to be. It will be said that by this he was left at the mercy of the Provost and Senior Fellows of Trinity College; but a man who came pursuant to that notice to be elected would naturally turn to the Resolution of the 1st of February, 1868, where the existing interests of parties were regarded. Then comes the creation on the 24th of October, 1872, of a Professorship of Comparative Anatomy. This was done without the fact having been communicated to any one of the candidates. How far this resolution might be inconsistent with a previous notice is, I think, not very important for me to consider: but here is a new office created. A Professor of Comparative Anatomy, not an Anatomist, is to be elected. He has not any duties in the Dissecting Room; yet half of the fees of that Anatomical School are to be given to him, fees previously receivable by the Professor of Anatomy alone. We must, in considering whether this was a legal appropriation of the fees, go back to the 40th of Geo. III.; and further, to the 15th of Geo. II. The Resolution of the Board, dated 24th October, 1872, "That a Professorship of Comparative Anatomy be created, the Professorship to be partly endowed from the fees of the Dissect-

ing-room," was submitted to the Visitors on the 26th of October, 1872, and this was the decree made by the Board and the Visitors:—"Whereas, by Letters Patent granted by Her Most Gracious Majesty, Queen Victoria, in the eighteenth year of her reign, power is given to the Provost and Senior Fellows, with the consent of the Visitors, to found new Professorships, and to assign salaries to the Professors; and whereas, it is expedient that further provision should be made for the teaching of Comparative Anatomy in the College, it is hereby declared that there be established in Trinity College a Professorship of Comparative Anatomy." If this were in an Act of Parliament, it would show that a legislative provision was necessary to deprive a man of his rights. I have some difficulty in pressing this matter upon this tribunal; but it is consonant with reason and law that a provision enabling a Board to remove a man, and deprive him of rights previously enjoyed, should be done by law. Is the taking away the fees of an office a violation of the spirit of the Statutes? Go back to the Act (the 25th of Geo. III., ch. 42), "An Act for the establishing a Complete School of Physic in this kingdom." This Act appoints four Professors on the foundation of Sir Patrick Dun, and three Professors of Trinity College; one of these officers is a Professor of Anatomy—a teacher of Anatomy. Nobody can teach Anatomy without dissection. The power over the Dissecting-room was essential to the discharge of his duties, and his character as a Professor of Anatomy. It cannot be put under the head of "Comparative Anatomy," unless cats and dogs are to be raised to the dignity of human subjects. Some persons certainly are so enamoured of the lower animals as to place them on a level with humanity; but the old Irish Act of Parliament did not so dispose of and classify cats and dogs [a laugh.] Acting in the spirit in which the Statutes were framed, the Professor of Anatomy should have the right to regulate every thing connected with the subject, and if a portion of the fees of the Dissecting-room are taken away, they are diverted from the purpose for which they were designed—instruction in Anatomy—and they belong to the Professor.

Vice-Chancellor.—You do not dispute the power of the Board to regulate the fees?

*Mr. Butt.*—No; but regulating unreasonable fees, and fees that are against the spirit of the Act, is a very different thing from giving them to another person. The Board have not any right to apply the fees to any purpose but to compensate the

Professor of Anatomy. They may regulate the amount to be paid, but they cannot misappropriate the fees.

Vice-Chancellor.—The words are "that the fees of the Dissecting-room, heretofore receivable by the Professor of Anatomy and Chirurgery, shall be divided equally between the two Professors."

*Mr. Butt.*—It is illegal if the fees are applied to any purpose but that of the Professor of Anatomy.

Vice-Chancellor.—You contend that the Board had not any right to give any portion of the fees to a Professor of Comparative Anatomy.

*Mr. Butt.*—Certainly not. The 33rd section of the 40th of George III. is as follows:—"Be it enacted, by the authority aforesaid, that it shall and may be lawful to and for the said several Professors, to charge reasonable fees, to be paid by all such persons as attend the respective Lectures, except the Clinical Lectures, the fees for which have been already provided for; the said fees to be paid on admission, and to be from time to time regulated in respect to Sir Patrick Dun's Professors, by the President and College of Physicians; and in respect to the said University Professors, by the Provost and Senior Fellows of Trinity College, Dublin." If these fees fall within the section, an order appropriating them to any other purpose is illegal; if they do not fall within the terms, yet appropriating them to any other purpose is contrary to the spirit of the Statutes. Observe, the power of regulation is not to the appropriation of the fees, but the Professors are to charge them.

Vice-Chancellor.—What is meant is the regulation of the amount of the fees.

*Mr. Butt.*—What was done formerly? The Professor had full power over the School of Anatomy. He took fees from the pupils. The fees for the Lectures and Anatomy were kept separate, and out of the fees received for dissection the Professor paid the Demonstrator, and also paid for the subjects. These fees were as much belonging to the Professorship as were the fees received for the Lectures; and the fees for dissection were really fees for teaching Anatomy. Then, what the Board first did was, by the Resolution of 1865, they said, that half of the money should go to maintain a Demonstrator, Dr. Bennett, whom they called a University Anatomist, I say a Demonstrator.

Dr. Battersby—The College have drawn a distinction between dissecting and demonstrating.

*Mr. Butt.*—Their case is: We built the Dissecting-room.

We have power to do what we like with it. It does not belong to the Professor of Anatomy, and we can give it to any one we please. We have a right to apply the fees just as we like. I have endeavoured to show, within the letter of the Statute, that, in reason and truth, this is an invasion of the rights of the Professor of Anatomy, and that it is most unjust to take the fees from him and divide them with another. If it comes within the letter of the Act, it clearly is illegal; but see now whether the disposal of these fees is not contrary to the spirit and meaning of the 15th of George III.: "Whereas by said deed, he (the said Sir P. Dun) among other things, declared it to be his desire and intention to make provision for one or two Professors of Physic, if the maintenance should prove sufficient, to read public Lectures and make public anatomical dissections of the several parts of human body or bodies of other animals, &c." This is plainly an indication that the dissections were incidental to the fees of the Professor of Anatomy in the College. Then comes the question, Is dissection an essential part of Anatomy? If it is, what right have the Board to take the fees from the Professor and appropriate a share of them to the Professor of Comparative Anatomy? If they establish a department for the dissection of the lower animals they may sustain it by fees, but though there is a power to institute new Professorships, they are not Professors of the School of Physic which is approved of by the Statute. They cannot make a new Professor in the School of Physic. If that be so, and it is intended that the Professor of Anatomy should charge fees, dissect, and charge fees to the pupils, is it not a misappropriation of those fees from the School of Physic, of which Anatomy is a substantial part, is it not a violation of law to apply those fees to any other purpose? They are taken altogether from the School of Physic, which is contrary to law. It might be desirable to have a Professorship of Comparative Anatomy; but if the Board desired to take away from the School of Physic a thing which by Statute properly belongs to it, they should have obtained an Act of Parliament. Therefore the College are bound, whatever fees they receive for the maintenance of the School of Physic, to apply them to the carrying out of that purpose, and to none other. This School of Physic has its privileges, it entitles men to a Degree. There is a trust to maintain this School of Physic efficiently, and out of all the funds they get by keeping it up. It is intended that it shall be a complete School of Physic, and that the practice and study of Anatomy shall be a part of it. Have the Board a right to take away from the Anatomical Department any of the fees?

The Professor of Anatomy delivered eighteen Lectures upon Comparative Anatomy. The Board took away from him this duty, and imposed the duty upon the Professor of Comparative Anatomy.

Vice-Chancellor.—Has not the Professor of Anatomy been relieved from the duties incidental to the office of a Lecturer upon Comparative Anatomy?

*Mr. Butt.*—Yes; they have taken off part of his work, and taken away part of his fees.

Vice-Chancellor.—Might not the Board lower the fees?

*Mr. Butt.*—Yes.

Vice-Chancellor.—And give them to the other Professor, who relieved him of a portion of the work?

*Mr. Butt.*—No; the fees are diverted from their legitimate application—the dissection of human bodies.

Vice-Chancellor.—It was part of the Professor of Anatomy's duty to lecture upon Comparative Anatomy; he is relieved from that part, and might not then the fees be reduced?

*Mr. Butt.*—The School of Physic is complete; every one of the Professors is subject to the College of Physicians; they have a right to complain that the Board have introduced a new Professorship of Comparative Anatomy, as being outside the School of Physic. My contention is, that the School of Physic is by Statute a complete School; it was not surely a University institution, nor purely an institution of the College of Physicians; but the Act said, that certain Professors of the University shall belong to that number of Professors, and one of these was the Professor of Anatomy. Some were University Professors, some were Professors of the College of Physicians. They were constituted by the Statute; they got Statutable fees; they had a right to charge reasonable fees for Lectures; the power was subject to a modified restraint upon its exercise. A broad distinction is drawn between the School of Physic and any Professor who is not of their School; and my argument is, that everything attached to the School of Physic, all the fees that were received, should lawfully go to the maintenance of the School of Physic; and the work required for the furtherance of that School devolved solely upon its Professors, and its fees could not be devoted to the maintenance of any other Professor.

Dr. Battersby.—I agree that everything that belongs to a complete School of Physic cannot be diverted from that purpose; but I cannot see when a modern Institution—the dissection department—has been created, that the Board are disentitled to appropriate fees to the maintenance of that new Institution.

*Mr. Butt.*—Dissections take place there.

Dr. Battersby.—There may be dissections by the Surgeon who attends Sir Patrick Dun's. There is nothing to prevent him from dissecting, and the College having another Professor by whom dissection is also carried on.

*Mr. Butt.*—There was a Dissecting-room in College, and that is recognized by the 15th Geo. II.: "And whereas some of the branches of Physic appointed by the said Sir Patrick Dun, in his aforesaid recited deed or instrument, for subjects of the said Professor's Lectures are now treated of in Lectures, instituted in Trinity College, Dublin, since the death of the said Sir Patrick Dun, so that the good and charitable intentions of the said Sir Patrick Dun, in providing for the instruction of students of Physic, Surgery, and Pharmacy, will be more effectually answered, and the public good more promoted, by dividing on the next vacancy, on the death or surrender of the said Dr. James Grattan, the said King's Professorship of Physic in the city of Dublin into three Professorships," &c. The Legislature, in carrying into effect the trusts of Sir Patrick Dun, omitted any provision from his foundation for a Professor of Anatomy, because they said this want was provided for by a Lectureship in Trinity College; they looked to the Lecturer to carry out the intentions of the donor, under the Statute. When we come to the Statute of 1785, the Lecturer is elevated into a Professor of Anatomy; and they say they had executed the trusts of Sir Patrick Dun, because, though they had not applied all his money to constitute all the Professorships he desired, it was because they provided for everything he required, in a common School of Physic, one thing being to have public Lectures and public anatomical instruction. There is a trust imposed upon the College by Sir Patrick Dun to see that this is carried out in the School of Physic, and they admit this Trust, because the Professor of Anatomy does the duty. If this be so, and fees are given for dissections, whereby a part of the trusts of Sir Patrick Dun are carried out, the Fees should be paid to the Professor, and in answering the greater efficiency of the School, a trust has been fastened on the Board.

Dr. Battersby.—The *University* are not precluded from nominating another Professor.

*Mr. Butt.*—Provided they do not take away the Fees charged by the Professor in the School of Physic, and allowed by the 33rd section of the 40th of Geo. III. He had a power of charging reasonable Fees. The first attempt to interfere with his Fees was in the year 1865, when the Board declared that half

of them should be given to the Anatomist; and in 1868 they further trench upon the privileges he enjoyed, by requiring that the fees received for dissections should be lodged in the Bank to the credit of the Bursar, but the fees were still applied for Anatomical purposes; in the year 1872, they made an allocation of fees, not for the purpose of dissection, nor for the promotion of the School of Physic, or anything that was under the control of the Professor, but for the endowment of a Professorship of Comparative Anatomy. Would they be justified in removing the Dissection-room? It is essential to the Professor of Anatomy that this Dissection-room should be maintained—and it has been so recognized under the foundation of Sir Patrick Dun, and by the 15th of Geo. II., which assumed that the intentions of the donor had been carried into effect by the establishment of Lecturers.

Vice-Chancellor.—Was the Dissection-room in existence from the beginning?

*Mr. Butt.*—The 25th of Geo. III. sec. 8, converted the Lectureship into a Professorship of Anatomy. There never was a Dissection-room in the University except that which was under the control of the Professor of Anatomy. The Lecturer of Anatomy is made by the Act of 1785 a Professor in the Joint School of Physic. Surely he was made a Professor, with the control from that time forward of the Dissection-room; and this is doubly manifest when we find that one of the things to be carried out in furtherance of the wishes of Sir Patrick Dun, was a Course of Public Dissections; and is it to be said that the Legislature instituted a School of Physic, without making a provision for the carrying into effect this part of the will of Sir Patrick Dun? They have diverted the fund he left—they made an Hospital, why? because they have said, "We are not disappointing the intention of the testator; we find it carried into effect by another body, and we fulfil the intention of the testator by throwing that other body into a Joint School of Physic." Otherwise they could not have diverted a penny of the money to the maintenance of an Hospital. We shall associate the University Professors with the Professors of the College of Physicians. The deed of Sir Patrick Dun is curious. The Statute reciting it says, that the said Sir Patrick Dun, amongst other things, declared "it to be his desire and intention to make provision for one or two Professors of Physic." It was in fulfilment of this that the Professor in Surgery gave eighteen Lectures in Comparative Anatomy. It is, no doubt, a mistake in the printed documents to state that one of the duties of the

Professor shall be to read Lectures in "Astrology." I suppose that what is meant is "Osteology." Here is the will of Sir Patrick Dun, to have Lectures upon Comparative Anatomy and Dissection. The Legislature divert this bequest—they make other provisions, but upon the express understanding that what the testator desired has been provided for. They say, we find a Lecturer in the College who has a Dissection-room, a Lecturer upon Surgery—we make him a Professor, and place him in the Joint School of Physic, and bestow upon him certain advantages, therefore we have fulfilled the intentions of Sir Patrick Dun, and carried out his view, because the Professorship is connected with the College of Physicians. Is it fair, if the Board lower the Professor, diminish his office by removing a portion of his fees, and institute a new Professorship independent of the College of Physicians, over whose conduct that College has not got any control? They have taken away the Lectures, and they might enter to-morrow and say, we will institute a new Professorship, take away the Dissection-room, and make the School independent of the College of Physicians. They have not any right to do this. The intention of the framers of the Statute was to establish a Joint School of Physic—a kind of amphibious creation—half representing the College of Physicians, half the University of Dublin. I wish that some of our modern Acts of Parliament were so well drawn as has been done in these Statutes. Is it not a violation of the law, and contrary to the intention of the testator, to take away the fees of the Professor? They may cut down or regulate the fees. I am sure they would not do this to punish a Professor whom they disliked; but they have not any right to allocate the fees paid for the purposes of Anatomy, and apply them to carry out any other object but the School of Physic. They have not any power to deprive him, nor relieve him, of his duty, because they had become virtually trustees to execute the will of Sir Patrick Dun. This is all that I think I can urge upon the question of Fees. Can it be said that the notice of the 24th of October, 1872, was a contract? Would not any person who found that the fees had been misappropriated to a Professorship of Comparative Anatomy have reason to complain? Would he not be justified in contending that it was unjust to give a portion of the fees previously received by the Professor of Anatomy, to a Professor of Comparative Anatomy newly appointed? The emoluments of the Professor depended upon the number of pupils by whom the Statutable fee was paid. Everything that diminished the efficiency of the Dissection-room diminished his interest in the

Institution, and he had a right to say he understood it was a regulation that the fees should be paid to a party who was under his control. I am not sure it was the best thing that the Board could have done, but it was one thing to say to a Professor, "You must appoint a Demonstrator and pay him a certain income." If the Professor were, if I may use the expression, starving in an Anatomy Room by not providing a sufficient supply of subjects, the Board might insist upon a proper number of those subjects being provided, but these are things within the Dissection-room. Within the obligation of Sir Patrick Dun's will, in providing instruction in Anatomical Dissection and Comparative Anatomy, and within the School of Physic, jointly, in the College of Physicians and the University of Dublin. When they wander out of their legitimate duty, they might as well give the fees intended for a Professor of Anatomy to a Professor of Political Economy, because the essential condition of doing that, in order to fulfil the intention of Sir Patrick Dun, is, that it should all be carried on within the Establishment of a complete School of Physic, the Professors of which are defined.

Vice-Chancellor.—Suppose Dr. M'Dowel had been elected to the office, could they, after the office had been accepted, alter the fees?

*Mr. Butt.*—They might possibly say, we find that sufficient remuneration for the Demonstrator has not been provided, and we shall oblige you to give more; but it does not come within the scope of their authority to misappropriate the fees, and place them entirely out of his control. To divert the fund from the trusts, and the Joint School of Physic, is the act to which I object, though the Board might make rules and regulations. They might as well devote the fees to the endowment of a church. First, I say, even upon an agreement with Dr. M'Dowel, the Board have not any right to act as they have done. Secondly, that within their trust they cannot do it; it is an attempt to apply to a Professorship, which does not belong to the School of Physic, fees that properly belong to a Professor who is connected with that School. The question is, was there a contract? If so, have not the Board altered that contract? If they say that Dr. M'Dowel was bound to give up his office at the Whitworth Hospital, they were not justified in interfering with his fees. I have shown that they inquired into the amount that he would lose by the new arrangement, and they found that they were subtracting what was eqivalent to the income from the Whitworth Hospital. This proves that the Board intended that he should retain the Whitworth Hospital, and they re-elect him to the Pro-

fessorship. I say that a contract of this kind would be illegal. The Board had not any right to make it; and I contend that Dr. M'Dowel was justified in presenting himself for re-election, and then disputing the legality of the proceeding adopted by the Board in reference to his office and his fees. The notice does not put the acceptance of the office upon contract. There should have been a notice that any person holding another office would be expected to resign it, and should sign a declaration. The Board do not do this. The words are distinct from anything like a contract. If the Board want to turn it from the statement of a rule to a contract, they should have bound Dr. M'Dowel to say that he submitted to it.

Vice-Chancellor.—He accepted the office on the terms specified.

*Mr. Butt.*—This is what I deny. They should have gone further than merely passing a Resolution. There are a number of cases in which a person who is told of the existence of a rule in reference to an office, disputes its legality. Suppose the electors said that a person should not practise at the Bar, and he disputed their right to impose such a rule. Suppose there were a rule of the Corporation, prohibiting the Recorder from practising at the Bar, he might set them at defiance. It has not been put, in this case, as a condition. They say that no man can hold the office. They did not ask Dr. M'Dowel to give up the Whitworth Hospital, nor did they intimate to him that they required him to give it up; then, again we have it, that the alteration in the fees in the College was measured according to the fees in the Hospital. Would you send him to a new election? or ask him to resign, when the result would be a new election? It comes back to this: Is the stipulation or rule warranted by the Statute, and within the power of the Board to make it? If it be, he must submit, and will then consider whether he shall give up his place or resign his Professorship. If you come to the conclusion that the Board should elect the best qualified man, I contend that Dr. M'Dowel is this person. No complaint for the non-discharge of duty has been preferred against him—the Medical Schools have prospered under him—no charge has been brought against him of neglect at Lectures, or of not having been in the Dissecting-room at the time required; any idea of such a nature has been completely negatived—disposed of in the most conclusive manner, by the strong fact in the case, that after fourteen years' occupation of the office, he was thought to be so competent that he should be re-elected—and this, notwithstanding the allegation that he had not attended Sir Patrick Dun's Hospital as he should have done.

Vice-Chancellor.—We cannot at presnt enter into the merits or demerits of Dr. M'Dowel, in the performance of his duties.

*Dr. Ball.*—The seven years' time in which that occurred having expired; what have we to say to the matter?

Vice-Chancellor.—It does not properly apply here. If we think it to be our duty to give a suggestion to the Board we shall do so, but at present I do not think we should enter into this discussion.

*Mr. Butt.*—This is at an end. Dr. M'Dowel returns to his duty as Clinical Lecturer. I wish to show you that he has not been made, by Statute, Surgeon to Sir Patrick Dun's Hospital.

Vice-Chancellor.—He neglected to deliver Lectures.

*Mr. Butt.*—We must assume that the Board re-elected him under a strong sense of his qualifications, because the fact of his having ceased to deliver lectures in Sir Patrick Dun's Hospital was against him. This is a strong proof of his qualifications.

Vice-Chancellor.—It clears away all difficulty in that respect.

*Mr. Butt.*—In the Answer of the Board they say that in many Hospitals the system of allowing Medical Hospital teachers to hold appointments in more than one Clinical Hospital in Dublin at the same time was detrimental to the interests of the establishment. They put it upon the ground of being injurious to the students, and then that it was detrimental to the interests of a School. The proprietor of a School of Medicine might say that a Professor should not accept an engagement in another Hospital, as the manager of a Theatre might prohibit an actor from performing in another company. That might be a ground for saying that the Professor should not engage in another place; but here the Professor has not neglected his duty, and the Board need not take a narrow ground, unworthy of a University with such *prestige* as it has achieved in its Medical Schools—a reputation as great in this as it has acquired in other departments; and so long as their Professor has discharged his duties satisfactorily, they need not fear his being connected with another Hospital. They might as well say that a man should not be a graduate of any other University.

Vice-Chancellor.—If the Statute is the foundation upon which the rule can be supported, it is the same thing as if the rule were embodied in the Statute; but, on the contrary, if the power to make it has not been so given, the rule is not operative.

*Mr. Butt.*—On both points I have urged, and on every part

of this case we contend, that the fees belong to the Professor of Anatomy.

Vice-Chancellor.—There is a technical difficulty in the way, but we need not consider it. He has not made the declaration of office before admission. He cannot claim a right if he has not been legally admitted.

*Dr. Ball.*—We are not discussing merely the individual right of Dr. M'Dowel, but the propriety of the Resolution, no matter who has been appointed Professor. This is not an action to recover fees, but to consider the propriety of the act of the Board, in distributing the fees, no matter who may happen to be the Professor.

*Mr. Butt.*—We contend that the Visitors should decree that the fees belong to the Professor of Anatomy; that the Professor of Comparative Anatomy has not any right to them; that such a disposition of them is not justified by anything within the Statute, and that if it ever were within the Statute, the proceeding would be most prejudicial to the interests of the University.

*Dr. Ball.*—Under the Statute there is a body—the College of Physicians—authorized to inquire into the utility and public favour of the office, and if they approve of it, no one else has a right to interpose.

Vice-Chancellor.—Do you propose to call evidence as to the rule?

*Mr. G. Fitzgibbon, Q. C.*—Yes; in order to show that such a rule would not be advantageous to the office.

Vice-Chancellor.—If it has been authorized by the Statute, it is the same as if it were embodied in it.

*Mr. Fitzgibbon.*—No such rule can come under the Statute, nor is it necessary for the carrying out of its provisions.

Vice-Chancellor.—If the Statute gives the power, the rule is virtually within it.

*Mr. Fitzgibbon.*—The Statute gives a power to make rules which will be for the benefit of the Professorship—reasonable rules. The Board cannot go beyond their powers; and we will show that the rule in the present case does not come within the category, because it is not for the benefit of the Professorship.

Dr. Battersby.—I do not think that such evidence is admissible.

*Mr. Fitzgibbon.*—Then we shall first examine into other matters.

*Benjamin George M'Dowel, Esq., M. D., examined by Mr. Fitzgibbon, Q. C.:—*

Do you remember becoming a candidate in August, 1858, for the office of Professor of Anatomy and Chirurgery? I do.—Was that the first time at which you applied for the office? It was.—At that time did you hold an office connected with the House of Industry? I did, for twelve years previously.—What was the office? Professor to the Whitworth and Hardwicke Hospital.—When were you appointed? In April, 1846.—Is that an office for life? Yes.—Do you still hold that office? I do.—What are your duties in connexion with that Hospital? The delivery of Clinical Lectures.—At what time do you deliver these Lectures? Month about, with four other physicians. In alternate months? Two months in the year.—That is to say, there are four physicians who deliver Lectures in alternate months? Yes.—How many months are you so engaged? Two; and then I have the charge of a certain number of bodies during the whole year.—Of how many bodies have you the charge? The number varies from forty to forty-five.—Then your duties as a Teacher in the Whitworth Hospital extend only to two months, and you likewise have attendance upon a certain number of patients throughout the year? Yes.—What length of time do the Clinical Lectures take? Alternate days—three days in the week, each day, the lecture occupying about one hour and a-half.—Have the hours of attendance at the Whitworth Hospital clashed with your attendance in the College? (Question objected to).

*Mr. Fitzgibbon.*—The rule in its terms does not regulate the conduct of the Professor. It might become a rule regulating his conduct, if it were incompatible with the performance of his duties.

Vice-Chancellor.—You must extend it to all cases that might arise; and if the prohibition of a man from holding another office can be considered within the Statute as regulating his conduct, there is an end to the matter.

*Mr. Fitzgibbon.*—If the question is to be discussed in this way, we do not want the evidence.

Vice-Chancellor.—If the Legislature, in giving the power, left it to the College of Physicians and the Board, where they agreed, to make a regulation affecting the conduct of the Professor—anything that in their judgment would conduce to the more efficient discharge of his duties—if the words could be said to embrace that, they left them to consider what would be a prudent rule; but if the true meaning is, that it is to be a regulation for the internal management of the Institution, in reference to matters purely intramural, this is the limited sense in which the rule can be applied. You can only have the extended sense upon

the ground that those who had the power to frame the rule believed that it would most conduce to the efficient discharge of the duties of the office; but I do not understand how our judgment upon this point is to be affected by the opinion of others. Some persons might think that a man's whole time should be given to the Professorship, while others, whose opinion was of equal weight, might think that it would be more advantageous that he should have a more enlarged experience from a greater range of duties, provided, in point of fact, it did not interfere with the due discharge of his professional duties; but the Statute gives him no power; there is a power to appeal to the Visitors; where they agree, the Statute gives no power of appeal; and where they give an express appeal from one Body to the Visitors of the other, that would negative an implied appeal where the two Bodies agreed.

*Mr. Fitzgibbon.*—There is an express appeal given to every Professor who is charged with neglect. Making the rule is tantamount to stating that it shall be one of the duties of the Professor to resign the Whitworth Hospital. There clearly being the power in the Visitors to consider this, it turns round to the question—whether there is or is not this rule?

Vice-Chancellor.—Whether it is a legal rule?

*Mr. Fitzgibbon.*—It is only by evidence you can show that it regulates the conduct of the Professor, namely, by showing that his usefulness would be affected by his holding both offices at the same time. The Board say, "They believe that such a plurality of offices as is involved in the same medical officer, holding at the same time similar appointments in different Hospitals, is most injurious to the interests of the Hospitals and of the patients and pupils attending each Hospital." This is the proposition which we believe to be utterly unfounded, and we have a large body of evidence to prove that there is no foundation whatever for the allegation. We are at liberty to show that such a rule would be injurious. The duties of the office are subject to the control of the Visitors, and the question is whether it really is a duty?

Dr. Battersby.—It could not be made a duty, unless it applies to all offices; unless the rule could be extended, under circumstances that would show that Dr. M'Dowel was never delayed in the discharge of his duties, the rule cannot be extended at all.

*Mr. Fitzgibbon.*—Although it has not touched the duty?

Vice-Chancellor.—I suppose those who made the rule thought it would indirectly affect it.

Dr. Battersby.—Unless it could be extended upon general principles, without particular interference, it could not be extended at all.

*Mr. Butt.*—First, under the Statute, they can make rules regulating the conduct of the Professor; this might apply to any part of the conduct that might affect the Professorship, and this might be for the Court to determine upon the validity of the rule. There is another view; we cannot say that the whole control of the University over its Professors has been taken away; and suppose they justify, not upon the Statute, but the general right of control. Is that given up?

*Dr. Ball.*—I go upon the Statute.

*Mr. Butt.*—Then, if we can show the rule to be unreasonable, would we not have a right to object? The College of Physicians would not have any power to object, unless they had a statutable power; but independently of that power, any Professor may object to a rule which affects himself, as we do here—first we can show the result, and that it is an improper power exercised by the Visitors.

Vice-Chancellor.—I do not remember a like case in which evidence was admitted of this general character.

*Mr. Butt.*—As to regulating the conduct of parties, suppose they could show that the two offices were inconsistent, would they be entitled to say, this is a rule regulating his conduct? If they acted upon a complete discretion, and threw down their rule?

Vice-Chancellor.—If they put the rule upon an inherent power, and not upon the Statute; but here they proceed upon the Statute.

*Mr. Butt.*—This has been given up by Dr. Ball, but they say although it does not in terms regulate his conduct, it really did regulate it.

Vice-Chancellor.—It is for the Visitors to say whether they will give the larger or more limited construction to the power.

*Mr. Butt.*—If you limit it, there is an end to the case.

Vice-Chancellor.—I do not see how the evidence could possibly be admitted.

Dr. Battersby.—It might be an unfair rule as regards Dr. M'Dowel, because he might be able to attend to the two offices; but as a general rule, it is not to be decided by us.

*Mr. Fitzgibbon.*—We do not offer any evidence of opinion, but the fact that to hold the two offices is beneficial to the College, the pupils, and patients.

Vice-Chancellor.—We have before us the fact that Dr. M'Dowel has filled the offices for fourteen years.

*Mr. Fitzgibbon.*—There is something we must examine as to contract.

*Mr. Butt.*—If the rule is legal, I would advise Dr. M'Dowel to abide by it, and not stand upon the notice: if it be illegal, the Board should not say he agreed to abide by it.

Vice-Chancellor.—If anything turns upon it, and evidence in reference to it becomes necessary, we can consider it.

*Mr. Butt.*—It would place the Board in a wrong position were they to press a rule which they had not any right to make.

Dr. Battersby.—There must be two parties to a contract.

*Mr. Fitzgibbon.*—The contract is raised by the Answer.

*Mr. Butt.*—There is none.

*Dr. Ball.*—It is an element in the case that Dr. M'Dowel got fair notice.

*Mr. Butt.*—I am willing, on his behalf, to throw overboard every thing that passed. If the Board had a right to make the rule I shall submit to it, if it is within the Statute. If, upon the other hand, it is not so, it should not be enforced. Let the case be governed by the Statute entirely. They might say, "admitting that we had no power to make the rule, still you agreed to it, and took the Professorship subject to its conditions."

*Dr. Ball.*—The course pursued as to this matter was very unfair to the other candidates who were disposed to offer themselves. There was an express notice to all the public, that nobody could obtain the office unless he resigned any other office that he had. Is Dr. M'Dowel the only person who is to escape from this provision? Others having received that notice were deterred from coming forward. It is a very serious matter to other candidates whose interests may be involved in the transaction.

Vice-Chancellor.—Suppose there is something dubious in the notice, and a candidate gets the benefit of it, can he afterwards repudiate it?

*Mr. Fitzgibbon.*—It is right that I should read what has been admitted by the Board themselves. "We admit" (they say at paragraph 23, page 7 of their Answer), "that the Petitioner never, to our knowledge, information, or belief, conveyed or expressed, during his candidature, any intention of resigning his office of Physician to the Hospitals; and we know not, and therefore cannot say, whether he ever formed such an intention. We also believe that no intimation upon the subject was conveyed to him by the electors." This is enough for us, as it shows the manner in which he was elected.

*Mr. Butt.*—Would not this be a fair and desirable adjust-

ment of the case—if we do not raise any question as to the appropriation of the fees, let Dr. M'Dowel retain the Whitworth Hospital? If there be any mistake as to the fees, let us give up the contention about them, and let the decision solely be upon the legal right.

*Dr. Ball.*—The decision of the Visitors will affect the College of Physicians, if they have a similar rule.

*Mr. Butt.*—This would be determined by their own Visitors. Is my proposition an unfair one? I am willing to consent to the appropriation of the fees, take the fees during Dr. M'Dowel's Professorship. Do not raise the question against him; let that be decided hereafter.

*Dr. Ball.*—The fees have been given to Dr. Macalister, and we must have a decision upon their legality.

*Mr. Butt.*—Let the question be, "Is this a legal order, and had the Board of Trinity College authority for making it?"

*Mr. Fitzgibbon.*—The question is, to what points we shall direct the evidence?

*Mr. Butt.*—The whole question turns upon the legality of the proceeding. I deny its legality. There is the advertisement.

*Dr. Ball.*—The notice was published in the *Gazette.*

*Mr. Butt.*—But suppose Dr. M'Dowel did not see it?

The discussion here terminated.

*Dr. Ball*, Q. C., M. P., for the Provost and Senior Fellows.

It appears desirable that I should, on behalf of the Board, state the reasons which governed their proceedings. There are two questions for consideration—first, whether Dr. M'Dowel is bound to give up the Whitworth Hospital; secondly, whether if he be so bound, the Board can take from him a share and proportion of the fees which he formerly received. He may have to give up the Whitworth Hospital and not lose the fees, or be able to retain that Hospital and give up the fees?

The Professorship of Dr. M'Dowel is an office created by a Statute, under peculiar circumstances. The intention of that Statute was to place this College and the College of Physicians in connexion, as regards the Medical School of Dublin. The Statute took advantage of certain previous provisions made by Sir Patrick Dun towards the foundation of a School of Physic, seized upon the property of Sir Patrick Dun, and applied it in a particular manner; offices were created, not only in Trinity Col-

lege, but in the College of Physicians, and incomes were given out of the estate of Sir Patrick Dun for the purpose of endowing the offices. The 26th section of the 40 Geo. III. provides that the Provost and Senior Fellows shall have power from time to time to make rules and orders to regulate the conduct of the University Professors. One restriction—only one—was put upon this provision: "Provided always, that the said rules shall not be inconsistent with any of the clauses or directions contained in the Act of Parliament." The next section has a provision which shows the intention to have been, that each body should have a check upon the other. The rules made by the Provost and Senior Fellows are to be communicated to the President and Fellows of the College of Physicians; and the rules made by the College of Physicians are to be communicated to the Provost and Senior Fellows. The 27th section meets the case of there being a disagreement between these bodies, and provides that "if the College of Physicians disapproves of any of the rules and orders made by the Provost and Senior Fellows, and redress shall not be given in ten days after complaint thereof made to the said Provost, &c., the said President or Vice-President and College of Physicians may prefer the complaint to the Visitors of Trinity College, Dublin; and in case the said Provost, &c., shall at any time disapprove of any of the said rules and orders so made, and redress not given, the Provost, &c., may prefer their complaint to the Visitors of the said College of Physicians." The Statute intended that the power of inquiring into the rules of Trinity College should be exercised by the College of Physicians, and the rules of that College examined into by the Provost of Trinity College; and if there were a disagreement, the referees were, in the case of a complaint by the College of Physicians, the Visitors of Trinity College; and if the complaint were made by the University, then the Visitors of the College of Physicians. The Legislature had confidence that there was safety in the agreement of both these great bodies—one having control over the education of the youth of the country, the other created by Statute to control and regulate the medical education of the country; and they depended upon them in framing rules to import into them that which was consonant to propriety and justice. The Legislature having this confidence in these bodies, left the absolute decision on controverted matters to the Visitors, in the event of a disagreement between them. Now, if the rule is within the scope of the Act, this meets the whole matter in dispute; why, is it not within it to regulate the conduct of the University

Professors? Is it not a very narrow construction to say that it means merely that they are to regulate the number of hours that a Professor is to be in the Anatomical or Lecture-room? If nothing were intended but attention to mere petty details, could anything be more absurd than to have the elaborate machinery in operation, to determine some matter very insignificant in its character? The object of the Act clearly was, that each of the bodies should be a check upon the other, and that when necessary, either body, each being of equal importance and authority, should have a voice in determining the question at issue; but can it be doubted that the duty of these bodies in these inquiries relates to the conduct of the Professors? If the two bodies had decided that Dr. M'Dowel should not be allowed to have private practice, that Resolution would have been equally within the scope of their authority. The rule of prohibiting private practice has been put as a *reductio ad absurdum*. But the question of the wisdom of a rule, and of its being *intra vires*, are quite distinct. That rule might be unwise, but the Board had the power of making it. It will not be denied that they could regulate the hours and times of attendance. If they could to some extent, they could for the entire. They might have said that he should attend in the room from 9 o'clock in the morning until 5 o'clock in the evening, and that if he did not choose to do so, he should not be elected to the office. The word "conduct" has reference to the conduct and application of the time of the Professor, the direction and disposal of himself. Speaking, then, only of time and attendance, it must be conceded that, having power to regulate conduct, they had power to compel the most lengthened attendance. The prohibition to hold a second Professorship in an Hospital is a less important exercise of authority,—this total monopoly of his time, and included within it,—since what they could do indirectly they could legally do directly, and the time might be so fixed to prevent the discharge of any other duty. And this word "conduct" is wide, and embraces within it a rule against private practice or a second Hospital, seeing that these are part of the conduct of himself by the Professor. If then the rule prohibiting the holding office in a second Hospital be within the statutable power, the only person or body entitled to complain of it is the College of Physicians. No doubt, under the Statute they could. But not only have the College of Physicians not complained, but they have adopted a similar rule for their Professors, that College being the statutory arbiter of the wisdom of the rule. The Resolution of the Board of Trinity College was passed on the 1st of February, 1868, "that in future no Uni-

versity Professor in the School of Physic shall be allowed to hold an appointment as medical officer to any Clinical Hospital other than that of Sir Patrick Dun." This rule was communicated by the Registrar of Trinity College to the Registrar of the College of Physicians. The President and Fellows of that College approved of it, and in a few days afterwards made a similar rule to regulate the conduct and duty of the King's Professor. The rules are in the same words; so that not only have the College of Physicians, by its silence, and not objecting to the rule framed by the Board of Trinity College, affirmed it, but have evinced their approval of the wisdom and propriety of the rule, by enacting it themselves, to control and regulate the conduct of their own Professor.

Vice-Chancellor.—But this leaves the question of power untouched.

*Dr. Ball.*—And brings the rule upon its trial, whether it is a wise and reasonable rule or not? I show that the College of Physicians, instead of objecting, have adopted the same rule, and that the whole of the statutable power has been exercised, inasmuch as it is with the concurrence of both bodies that no rule has been adopted. If the rule comes within the word "conduct," there is no examination allowed, nor jurisdiction now available, to set the rule aside; if the College of Physicians complained of it, the Visitors have the power to investigate it; but this they have not done. If they do not complain, you, as Visitors, have no power to inquire into a rule which is *intra vires*, and adopted with the concurrence of both the bodies. It is to be borne in mind that both rules make an exception in favour of Sir Patrick Dun's Hospital. The reason is plain. The Statute implies the duty of the Professor attending the Hospital to lecture. He is connected with Sir Patrick Dun's Hospital by the Statute, and all the Professors are paid out of the property left by Sir Patrick Dun. The two bodies—the University and College of Physicians—have been put more in connexion with the source of emolument and endowment than was either of the Institutions before the Statute, and therefore the Statute gives the two bodies the power when in combination, but not separately.

Vice-Chancellor.—Then your view is, that our powers are under the Statute?

*Dr. Ball.*—Yes; and that even if you were to consider the rule to be unreasonable, you could not set it aside, unless the College of Physicians complained of it.

Vice-Chancellor.—If made under the Statute, it is the same as if it were embodied in the Statute

*Mr. Butt.*—That is, whether the power to make it is in the Statute.

Vice-Chancellor.—The great question is, whether the rule has been authorised?

*Dr. Ball.*—This turns upon the word "conduct."

Vice-Chancellor.—It must be subject to some restriction.

*Dr. Ball.*—It does not appear that there is any power of examination vested in the Visitors, except in this way:—The rule is good because it comes within the word "conduct." Then the two bodies have concurred in the rule, and all that the Statute requires has been done; but, suppose that it has not been done, what right have you to interfere?

Vice-Chancellor.—If this be so, what is it that brings us here as Visitors?

*Dr. Ball.*—It is the question relative to the fees.

Vice-Chancellor.—You do not claim any authority for the rule, except that which is derived under the Statute?

*Dr. Ball.*—Yes; and you have not any power to set the rule aside, except upon the complaint of the College of Physicians; and you have not any authority if it were outside of the Statute. You can sit here upon an appeal for the College of Physicians, and upon none else.

*Mr. Butt.*—Then you do not rely upon the admonition at all?

*Dr. Ball.*—No: there is not any doubt that when Dr. M'Dowel was continued in office for the second seven years, he retained the Whitworth Hospital, and the Resolution expressly said that this was subject to existing arrangements. These are the words in the Resolution of the College of Physicians. We say that this office terminated at the close of the seven years. There are, under the Statute, two different modes of dealing with the Professorship: under the 24th section, the College had the power to continue the Professorship for seven years; they might continue him in the office, without re-election, giving notice of it in the *Gazette*. If Dr. M'Dowel had been, by a graft upon his term, accepted and kept in the office for an additional term of seven years, there would have been force in the argument, that one was so grafted upon the other, the proviso in favour of existing arrangements should be continued: but there is an end of all this argument and hypothesis, when there has been a new election, because the *Statute* requires that there should be three months' notice in the *Dublin and London Gazettes*, in which are set forth the nature of the Professorship, and the emoluments attached to the office. We say that "the existing

arrangements," terminated with the seven years, and that if there had been such a prolongation of the tenure as there had been at the close of the first period of seven years, Dr. M'Dowel might have been continued in the office; but it would be unfair to a new candidate that there should be a secret reservation in favour of a former Professor. A man of the greatest eminence, who holds one appointment and will not give it up, to get the Professorship to which the notice refers, might be deterred from coming forward to offer himself as a candidate, while the practitioner who had already filled the office comes forward with a secret reservation in his favour.

VICE-CHANCELLOR.—It would resemble a claim for Tenant-right at the expiration of the lease.

*Dr. Ball.*—It may be like such a claim. The Act requires that there shall be a public advertisement announcing that the office is vacant; accordingly an express advertisement was published, and a reference made in it to the Resolution of February, 1868, "that no University Professor in the School of Physic can hold an appointment as medical officer to any Clinical Hospital except that of Sir Patrick Dun." It is immaterial whether Dr. M'Dowel considered that he had been excepted from the notice, if that notice were given in the distinct terms used; he cannot get a privilege because he did not see the transaction in its proper light, and because, having held the office previously, he introduced an exception in his own favour. The whole question, irrespective of him altogether, must be taken as if a new candidate had been elected, as if the practitioner had not been Dr. M'Dowel, but some other eminent surgeon, who being fully advised that he was not to hold the two offices, turned round and disputed the legality of the rule, and says that he was prepared to produce evidence to demonstrate that the rule was not a wise rule. He was informed of that rule, he knew of its existence, and must be bound by it, unless it is bad from illegality.

VICE-CHANCELLOR.—It is said that the words "existing arrangements" comprehend all interests in the Professorship or the Whitworth Hospital.

*Dr. Ball.*—That would be so wide that it would embrace every new candidate who came forward and had the office before.

VICE-CHANCELLOR.—There is not any difference between the words "existing arrangements" and "existing interests." Suppose that the words, "in reference to existing arrangements," were struck out, would the rule still be valid?

*Dr. Ball.*—Yes. If a man were in the office for seven years, without it, they could not make it against him unless he were going to take a new office.

Vice-Chancellor.—Suppose the two Bodies made the rule, and nothing was said about the seven years, would it affect the seven years?

*Dr. Ball.*—No.

Vice-Chancellor.—If the Board can regulate the conduct of the Professor, can they not make rules when such are advisable?

*Dr. Ball.*—If you give a man a freehold, or seven years' tenure, you cannot proceed to make it forfeitable by a new condition.

Vice-Chancellor.—The Legislature has said that the Board shall have power from time to time to regulate the conduct of the Professor; can they make a rule to-day and change it to-morrow, and apply it to anything terminable in its nature?

*Dr. Ball.*—It would be inequitable when Dr. M'Dowel held the office under an agreement in which there had been no such condition.

Vice-Chancellor.—Suppose the Board have the power—the Act never authorizing the acceptance of the two offices, but having the power to regulate the conduct of the Professor, from time to time, then they would have power to make a rule that might interfere with existing interests.

*Dr. Ball.*—They might have the power, but it would be inequitable to exercise it.

Vice-Chancellor.—But the question is, would you give them such a power, or restrain it?

*Dr. Ball.*—There may be the power to make the rule, but not a power to make a forfeiture of an office in an individual case.

Vice-Chancellor.—He is elected subject to regulations thereinafter mentioned. If he be elected subject to these regulations, he is bound by them.

*Dr. Ball.*—I do not think the Legislature considered that the two Bodies would concur in such a regulation. Like an Act of Parliament, you may do anything through it, but the Lords are a check upon the Commons, and the Commons a check upon the Lords. I contend that the Legislature conferred the power, and left, as a check upon the exercise of it, the security of the concurrence of the two Bodies.

Vice-Chancellor.—Every man who accepts an office is

aware that he takes it subject to conditions; but it is a different thing to give a power to his employers to make rules and regulations as they please.

*Dr. Ball.*—They can direct him to be in the School at such and such hours that it would render it impossible for him to accept another office. With respect to fees, the Resolution in question is one that divides a particular class amongst three persons, whereas the fees were previously divided between two only. The question as to fees is a very important one. In page 106 of the University Calendar for 1873, the fees are set out. "Order of study recommended. No regular order of attendance on Lectures, Dissections, and Hospital is required, but the following course has been approved of by the Board of Trinity College. First year:—

| | | | |
|---|---|---|---|
| Matriculation, . . . | £0 | 5 | 0 |
| Anatomy, . . . | 3 | 3 | 0 |
| Practical Anatomy, . . | 3 | 3 | 0 |
| Dissections, . . . | 4 | 4 | 0 |
| Chemistry, . . . | 1 | 11 | 6 |
| | £12 | 6 | 6 |

It is unnecessary to say that the fee of three guineas has not been meddled with, as that is the fee to which the Professor is entitled according to Statute; but other fees are the creation of the Board, at their disposal, and he has not any statutable right to them. The power to take fees has been given by the 33rd section of the 40th of George III.: "And be it enacted by the authority aforesaid, that it shall and may be lawful for the said several Professors to charge reasonable fees, to be paid by all such persons as attend the respective Lectures, except the Clinical Lectures, the fees for which have been already provided for." You will perceive that the 33rd section gives a fee for Lectures. The 32nd section is as follows: "The said several Lectures shall be given in the English language, unless specially ordered otherwise, and shall be given in a room or rooms provided for that purpose in the Hospital, to be erected for Clinical Lectures; and, until such Hospital be erected, the Provost of Trinity College shall be, and he is hereby empowered to grant a room or rooms where such Lectures may be given." There is no authority under the Statute to take a fee for anything but two things—one for Lectures by the several Professors, who are to charge reasonable

fees: the statutable fees are pertinent to Scientific Lectures—payment for instruction, practical instruction, in the actual work of Anatomy. The fee of three guineas for Anatomy, and a fee of three guineas for Practical Anatomy, are what the Professor receives.

Vice-Chancellor.—Was the second department established at the time the Act was passed?

*Dr. Ball.*—Yes; under the will of Sir Patrick Dun, and under his deed, there is an allusion to the practical character of the studies designed:—"I declare that it is my desire and intention to make provision for one or two Professors of Physic, to read public Lectures, and make public anatomical dissections of the several parts of human bodies or other animals." By the 2nd of George I. the intention of Sir Patrick Dun has been carried into effect, and the Professor has been called the King's Professor of Physic; that office has nothing to say to the College.

Dr. Battersby.—Is there any anatomical dissection at Sir Patrick Dun's Hospital?

*Dr. Ball.*—No, there is not. A single Professor was named in the first Act, but the Act of Geo. II. seized the property of Sir Patrick Dun to make Professors. The 15th of Geo. II. was the next Act; that made some alterations, and has the following recital: "And whereas some of the branches of Physic appointed by the said Sir Patrick Dun, in his aforesaid Lectures, are now treated of in Lectures instituted in Trinity College, Dublin, since the death of the said Sir Patrick Dun, so that the good and charitable intentions of the said Sir Patrick Dun, in providing for the instructions of Students of Physic, Surgery, and Pharmacy, will be more effectually answered, and the public good more promoted by dividing on the next vacancy," &c. No argument can be founded as to the legality of the fees, unless they are fees originating out of the whole transaction under the Statutes, and connected with the matter of Sir Patrick Dun's bequest from the beginning; whereas the recital proves that the College was not mixed originally with the Professorship of Sir Patrick Dun. The College had a Professorship, but the 40th of Geo. III. introduced the College, and fixed it with Sir Patrick Dun's, taking the property of Sir Patrick Dun, and applying it for the purpose of carrying his benevolent intentions into effect. The office which is called "an Anatomist" is not a recent office. The first appointment to it was made in the year 1715.

*Mr. G. Fitzgibbon.*—Before that year.

*Dr. Ball.*—It was the revival of an old office. The Act

uniting the Bodies was passed in 1800, at the request of the College of Physicians. In the year 1716 (upon the 8th Sept.) a Lecturer and Anatomist was appointed. To make anything of the argument at the other side, they must show that the whole of the Establishment sprung from the Act of the 40th of Geo. III. Independently of that Act, so far back as the year 1716, there was a Lecturer and Anatomist. The Board constructed the expensive Buildings in which there are Anatomical Schools—Schools unsurpassed by any Medical School in Europe. In the time of Drs. Macartney and Harrisson, when the School was not so extensive, when the fees were limited, and when it was difficult to procure subjects, when there was every species of outlay, it was the surplus that was divided between the Lecturers. It is true that they did for awhile divide the surplus, but this was done of the will and pleasure of the Board. Since that period the Medical School has grown to such an extent that there are 300 students in it. Far be it from me to detract from the merit of Dr. M'Dowel. I admit that he is a man eminently qualified for the office he holds. He brings forward, in his letter to the Board (Sept. 1872), the remarkable growth of this School. He calls attention to the progress of the School from 1858, when he was elected, and he shows that in 1858 the number of pupils who entered for dissection were 43, and in 1872, 202. This growth was probably unparalleled by any department of education in any College. This led to a change. The trifling emoluments derived from students, when the number was 43 or 62, would be inadequate, indeed, when the numbers increased, in one department (the Course of Anatomy) to 129, and in Dissection and Demonstration to 202. The University, upon this progressive growth of the Schools, introduced an Anatomist. I observed that Mr. Butt did not call Dr. Bennett "the Anatomist," but "the Demonstrator;" but the Board had a reason for giving him his right name, and they said they would put him into the office.

*Mr. Butt.*—There never was an Anatomist from the time that the College was associated with Sir Patrick Dun's.

Vice-Chancellor.—He is called "the University Anatomist."

Dr. Battersby.—Was he ever an officer of Sir Patrick Dun's?

*Mr. Butt.*—No.

*Dr. Ball.*—It is not questioned that Dr. Bennett was a man of eminence. The office of Anatomist was revived, and he received his share of the fees. I show the existence of something separate in the University before the 40th of Geo. III. came into

operation, and that it continued after it, so that there could be no merger. The third officer is a new one. Until the other day there was not any Professor of Comparative Anatomy—there was a Professor of Zoology—but it is useless to attempt to throw contempt upon the office of a Professor of Comparative Anatomy. We can easily understand that it is useful to experimentalize upon the lower animals, and that such subjects may be easily procured, when it would be difficult to get human subjects to perform such operations on—and much development has been given to general science, and to the science of Anatomy, and much benefit conferred upon mankind, by the application of Comparative Anatomy. Therefore the Professorship is a useful addition to the Schools. But what Dr. M'Dowel says is, "You should restore to me the moiety of which you have deprived me, and let me have the whole of the fees." The Board had this particular department of the Anatomical School to themselves.

Dr. Battersby.—What right had the Chirurgeon to operate in Sir Patrick Dun's Hospital?

*Dr. Ball.*—The Board gave him permission. What the Act required was, that the Professor should attend Sir Patrick Dun's, and give Clinical Lectures. It would seem to me that they estimated Clinical Lectures far more than they did the dissections. There is not any provision for an Anatomical room, nor for the procurement of dead bodies. What they did provide was a Course of Lectures upon the science of Anatomy, and Clinical Lectures. The providing of subjects for anatomical dissections is entirely voluntary on the part of the Board, and they maintained these by imposing a fee—not a statutable fee.

Dr. Battersby.—Unless under the provision which enables the Professor to take reasonable fees. The Clinical Lecturer has a fee of three guineas. They say that the Lectures were delivered in the Dissection-room in College.

*Dr. Ball.*—The regular Lectures take place in the Lecture-room; they are the practical Anatomical Demonstrations that occur in the Dissecting-room. I confirm the statement by the fact that the Anatomist has existed from the beginning, and was again brought into operation, showing that at the time of the formation of a Professorship in Sir Patrick Dun's Hospital the College had a Professorship similar in its character, under their own control. The creation of the office of Comparative Anatomist is legal upon various grounds. It comes under the general power "to elect suitable persons" to fill the new Professorships, which the Statute gives the Board the power of founding; the office of Comparative Anatomist is created under a decree of the Board,

arising out of the Letters Patent of the Queen—18th Victoria (page 119, Vol. II. of the College Statutes). You will observe that there is not any question as to the legality of the newly-created office. The Professor is obliged to attend in the Dissecting-room; and what the Board say is—we have three Professors, a Professor of Anatomy, Practical Anatomy, and Comparative Anatomy.

*Mr. Fitzgibbon.*—The Anatomist has not any salary.

*Dr. Ball.*—He receives his share of the fees.

*Mr. Fitzgibbon.*—He has not any salary.

*Dr. Ball.*—The fees are taken from the students, not as a personal fee, given to the Professor, but the three guinea fee is given to him. There cannot be, as regards the fee, any stoppage on the way. The other fee is for the expense of the Establishment, and the money thus expended is, to Demonstrators, £35 each —— &c. The surplus is divided. What did the Anatomical Committee do?

*Mr. Fitzgibbon.*—They superintended the purchase of Anatomical subjects.

*Dr. Ball.*—The manner in which the money is applied is decisive against any proprietary right. If it were such a right, the Professor would not have to pay anything. He is not to find a room, nor be subject to expenses, under the 33rd section. He is to charge a fee of three guineas. The Board make provision for the payment of the money, and are the distributors of it, using their discretion as to what shall maintain the Institution.

*Mr. Fitzgibbon.*—The accounts are kept by Dr. Bennett, and transferred to the Bursar's book.

*Dr. Ball.*—There is no doubt that the payments are to cover the whole expenses of the Establishment; whereas the other Establishment was different. Therefore, the Board had a right all along to divide the fees amongst different persons. It is said that Dr. M'Dowel allowed it.

*Mr. Butt.*—He received all the fees.

*Mr. Fitzgibbon.*—In reply to Dr. Ball's observation, as to the class in the olden time having been smaller than in modern times, I beg to say that Dr. Macartney's class was larger than any class now-a-days; his class was the largest ever formed in College.

*Dr. Ball.*—I say that the Board had a right to divide the fees, the receipts being their property for the maintenance of this particular Establishment. The first question relates to the conditions under which Dr. M'Dowel got possession of the office.

The second point is, even if he could hold the office, the Visitors should intimate their opinion that the rule is binding, giving Dr. M'Dowel time to make his election; because he is not to be deprived of his Professorship without the opportunity being afforded to him of surrendering the other office. If the rule is binding upon him, he can elect whether he shall retain the Professorship without the fees, or the fees without the Professorship. The second question is, whether he has the power to prevent fees received for practical dissections from being applied to purposes other than his own emolument. It comes to this: a proprietary right that cannot be interfered with. The second question must be decided irrespective of the first. Our statement is, that the distribution of fees has been, from the earliest time that there was a Professor, associated with the complete School of Physic. The Professor had the fullest control over all the fees that were received. Of course, he paid for everything. The Dissecting-room was supplied by the College, but the Professor paid for the subjects and the Demonstrators. The only change made in 1865 was, that the Board took upon themselves to see what was given to the Demonstrator, and in 1868 they took fees from the Professor, and gave them to the Demonstrator.

The Court was adjourned.

## TUESDAY, 4TH FEBRUARY, 1873.

The Court resumed the inquiry.

At the sitting of the Court, in reply to an observation of the VICE-CHANCELLOR as to a power to punish persons who were guilty of contumacy, *Dr. Ball* said he did not put forward the proposition that the Visitors were bound to ascertain the legality of the rule made by the Board. If there were any exceptional circumstances to take Dr. M'Dowel out of the operation of the rule and whether the Board were justified in depriving him of certain fees, were questions to be yet determined; but his contention was, that there could be only one complainant against the rule, and that party did not complain.

*Mr. Tandy, Q. C.* (for the Board of Trinity College).—I apprehend that it is better to keep the two matters under discussion distinct and separate from each other. The first relates to the question in reference to the Resolution of the 1st February, 1868; the second relates to the fees, payable for the use of the Dissecting-room and for demonstrations therein. With reference to the question as to the Resolution, there are two points to be considered. In the first place, the question is, whether the Provost and Senior Fellows had the power to make the rule? In the next place, if they had that power, has this Court, as now constituted, jurisdiction to decide upon the validity of the rule, at the solicitation of Dr. M'Dowel?

VICE-CHANCELLOR.—We have to determine the legality of the rule; secondly, whether Dr. M'Dowel, be the rule legal or illegal, was not bound to conform to it. All the power we have, going to our strict rights, is incidental. Supposing that the Appeal is under the 29th section; supposing that the order made could be treated as an order of admonition, this is our special duty, and Dr. Ball admitted that the rule can only rest upon the Statute, therefore we can get at it only under the 29th section. I suppose you do not intend that we should go back to the question whether we can treat it as an admonition.

*Mr. Tandy.*—I do not like to make any admission except for the sake of argument.

VICE-CHANCELLOR.—Do you make it for the purpose of decision?

*Mr. Tandy.*—No. I cannot do so. Clearly, the Resolution of December, 1872, forwarded to Dr. M'Dowel, was not intended as an admonition, and did not operate as such; and further,

I could not safely do it; for I apprehend, if the Board intended to admonish him, they should, according to all the principles of law, have first called him before them.

VICE-CHANCELLOR.—Dr. Ball said we should not be called upon to go into that question, but that what was wanted at both sides was to get our opinion as to the validity of the rule of 1868; and also, supposing we considered that the rule was not valid, whether we thought that Dr. M'Dowel was bound to conform to it, and that it did not lie in his mouth to raise any opposition to it.

*Mr. Tandy.*—I am willing to submit to this, but, according to Mr. Butt's fair and candid argument, he did not raise any objection upon the ground, that, supposing the rule to be valid, Dr. M'Dowel's disobedience would not be a neglect of duty under the Act. I shall, therefore, argue this portion of the case upon the assumption that, if the Resolution were legal, Dr. M'Dowel was guilty of a wilful neglect of duty, within section 28 of 40 George III., ch. 84, and has rendered himself liable to be admonished, and that an admonition was duly given.

VICE-CHANCELLOR.—If the rule is legal, the question is, whether what Dr. M'Dowel has done is a wilful neglect of duty? If it should be held that the rule was binding, and had a statutable force, it is open to the College to go on and serve Dr. M'Dowel with an order of admonition.

*Mr. Tandy.*—I find the expression, *ultra vires*, used in the Petition, relative to the rule or regulation. Now what is the meaning of the expression?

VICE-CHANCELLOR.—It is in the mouth of everybody.

*Mr. Tandy.*—But it is well to be precise as to the term used. The meaning is, that it is a rule prohibited either in express words by the Statute, or by necessary implication from the words employed in the Statute. In the case of *The South Yorkshire Railway Company* v. *The Great Northern Railway Company*, (7 Ex. 84), Parke, B., says, "Where a Corporation is created by Act of Parliament for particular purposes, with special powers, then, indeed, another question arises; their deed, though under their Corporate seal, and that regularly affixed, does not bind them, if it appear by the express provisions of the Statute creating the Corporation, or by necessary or reasonable inference from the enactments, that the deed was *ultra vires*—that is, that the Legislature meant that such deed should not be made." In the case of *The Mayor of Norwich* v. *The Norfolk Railway Company* (4 Ell. & Blc. 447), Lord Campbell recognises the principle. Referring to the case I have cited, his Lordship says: "The

question then appears to me to be simply this, Whether it can be reasonably made out from the Statute that this covenant is *ultra vires*, or, in other words, forbidden to be entered into by either the plaintiffs or defendants." I will hereafter submit to the Court that the rule in controversy is within the powers conferred by section 26 of the Statute, and that the words of that section do not either expressly or impliedly forbid the making of the rule; but, before doing so, I will briefly notice some other objections which have been raised. Mr. Butt has raised an ingenious point upon the 20th section of the 40th George III.: "And be it further enacted, by the authority aforesaid, that the said Professorships of the Institute of Medicine, &c., on the foundation of Sir Patrick Dun, shall be open to persons of all nations professing their faith in Christ, and the said Professorships of the University of Dublin to Protestants of all nations, provided they shall have taken Medical Degrees, or shall have obtained a license to practise from the said College of Physicians, in consequence of a *Testimonium*, under the Seal of Trinity College, Dublin." Mr. Butt insisted that the rule attempted to limit the number of candidates for the University Professorship, and that it was in contravention of the above section, and was therefore bad; I presume he founded this objection upon some cases of which *The King* v. *Tappenden* (3 East, 186) may be taken as an example. It was there held that a Bye-law was bad, because it added a qualification to the persons before eligible to be taken as apprentices, beyond what the original constitution had required; but this rule is not open to that objection. The rule is not that no person shall be eligible to be a candidate for a Professorship who has any other Clinical Hospital but that of Sir Patrick Dun. It does not prevent any one from being a Candidate, but declares that if he be elected he must give up any office in any other Clinical Hospital.

Vice-Chancellor.—He may be elected, but if he will not comply with the rule, he will not be allowed to act in the office.

*Mr. Tandy.*—The rule or Resolution merely declares that in future no University Professor in the School of Physic can hold an appointment as Medical Officer to any Clinical Hospital, other than that of Sir Patrick Dun. If the argument of Mr. Butt were to be carried to its fullest extent, there would not be any rule that might not be open to objection; and the result would be, that the 26th section of the Act would be rendered a nullity, if such a construction were to be put upon it. What the Resolution really does is, to create a criterion of fitness for the proper discharge of the duties of the Professorship, and to pro-

mote the interests of the School of Physic created by the Act, in connexion with Sir Patrick Dun's Hospital, by making a regulation which was considered to be necessary for the attainment of that object, and having regard to the objects of the Statute 40th George III., ch. 84—the large and comprehensive language of section 26, and the functions and duties of the University Professor, I submit that the Resolution is good and valid, and within the principles laid down in the note to the case of Corporations, 4 Co. Rep. 77 *a.* Section 20 of the Act relied upon by Mr. Butt has, as I submit, no bearing upon the case. Its object is obvious. While the Professorships on the foundation of Sir Patrick Dun are thrown open to all qualified persons professing their faith in Christ, the University Professorships are confined to Protestants. The reason for the distinction is, that long before the passing of the 40th George III., ch. 84, there had been Lectureships in Anatomy and Surgery, Botany, and Chemistry, established in Trinity College. By section 13, the three Lecturers were converted into Professors; they were not, by this change in their *status*, to lose their character of College officers. Trinity College was then treated as a Protestant Institution, and hence the provision in section 20 was made. A question was asked of Dr. Ball by a member of the Court, whether it would make any matter if the postscript attached to the Resolution of 1868 had been omitted; and I submit that even if the *nota bene* making a provision for the maintenance of existing arrangements had been left out, it would not affect the then existing office held by Dr. M'Dowel during the continuance of the then Professorship; the rule or maxim, "Nova Constitutio futuris formam imponere debet non præteritis" (a legislative enactment ought to be prospective, not retrospective, in its application) would then apply. The interpretation put upon the rule, in a great number of cases decided upon it, has been summed up in the leading authority, *Moon* v. *Durden* (2nd Ex. p. 22). Here, however, we have the *nota bene* properly put, which prevents any question being raised upon the subject.

Vice-Chancellor.—The postscript is not in the notice of the election.

*Mr. Tandy.*—No; and simply for this reason—the term of the former Professorship had expired, and there was to be a new election open to all qualified candidates.

Vice-Chancellor.—It only applied to interests acquired under the Statute; the interest had expired, and they were starting afresh; there were not any existing interests; there was to be a new election.

*Mr. Tandy.*—Let me approach the matter in another way, and with another consideration; and it will plainly appear that this was a proper and reasonable rule.

Vice-Chancellor.—You need not trouble yourself about this part of the case; if there was power to make the rule, the Legislature considered that the two Bodies were the proper authorities by whom it should be made.

*Mr. Tandy.*—But appearing here on behalf of the Provost and Senior Fellows of Trinity College, I think it right to call your attention to the 16th paragraph in the Statement of the Board of Trinity College.

Vice-Chancellor.—Many competent judges consider that to allow medical teachers to hold appointments in more than one Hospital at the same time was beneficial, while others entertain quite a different opinion.

*Mr. Tandy.*—From the 16th paragraph you will see "it was found that the system interfered with the regular and proper discharge of their duties by the medical officers," and the rule prohibiting medical teachers from holding other appointments was adopted in all the Hospitals in Dublin. The statement in paragraph 16 is as follows:—"In and before the year 1867, a system had existed in four Hospitals in Dublin, of allowing medical teachers to hold appointments in more than one Clinical Hospital at the same time. These were the Mater Misericordiæ Hospital, the Jervis-street Infirmary, the House of Industry Hospitals (consisting of the Richmond, Whitworth, and Hardwicke Hospitals), and Sir Patrick Dun's; but it was found that this system interfered with the regular and proper discharge of their duties by the medical officers. This system was abolished in the Mater Misericordiæ Hospital and the Jervis-street Infirmary about the year 1867, by the establishment of a regulation that no medical officer of these Institutions should hold at the same time an appointment as medical officer in ony other Clinical Hospital. A similar rule was shortly after adopted in the House of Industry Hospitals, and was acted upon by the governing body of that Institution, who, on the election by them of a medical gentleman to the office of Clinical Surgeon in the said Hospital, imposed upon him the condition that he should give up the office which he then held of Surgeon to another Hospital. The Provost and Senior Fellows of Trinity College, acting upon a similar rule, prohibited the University Anatomist from seeking the office of Surgeon to the Meath Hospital, he being a Surgeon of Sir Patrick Dun's Hospital at the same time." Paragraph 17 of the same statement states the passing of the rule or regulation on the

1st July, 1868, and sets it forth. This is the rule or regulation, the validity of which is now questioned. Paragraph 18 proceeds as follows:—"The said rule was approved of by the College of Physicians, and a similar rule was adopted by the last-named College to regulate the conduct of the King's Professors, and was subsequently acted upon by them in the year 1869, when Dr. William Moore, who was then elected by them to the office of Professor of the Practice of Medicine in the King's and Queen's College of Physicians, was required in pursuance of the said rule to resign the office of Clinical Physician to Mercer's Hospital, which he then held, and which last-mentioned appointment he then accordingly resigned." It thus appears as an undoubted fact that the trustees and managers of all the Dublin Hospitals recognised the evils of the system which had formerly prevailed, and adopted, and have acted upon rules similar to that of the 1st February, 1868, and that the rule passed by the Provost and Senior Fellows was approved of and adopted by the King's and Queen's College of Physicians—the very body who, in conjunction with Trinity College, were to form and superintend a complete School of Physic in Ireland; and the contention now is, that these two Bodies or Corporations are alone incapable of making a rule for the good government of the School of Physic, which rule has been considered necessary for the good government of all the other Hospitals in Dublin; and that the King's Professors and the University Professors are alone to enjoy the exclusive privilege of holding, at the same time, appointments in as many Clinical Hospitals as they please; at least, that they cannot be prevented from doing so by the King's or Queen's College of Physicians, or the Provost and Senior Fellows constituting the authorities of Trinity College. Suppose that the Statute 40 George III. c. 84, had never passed, and that the King's and Queen's College of Physicians, and Provost and Senior Fellows had been made a Corporation for the purpose of establishing a complete School of Physic in Ireland; I submit that in that case they could make a by-law in the words of the rule or regulation in question, and that it would be held a reasonable and valid by-law, and one necessary and proper for the accomplishment of the objects of the Incorporation, and to secure the good government and conduct of the School of Physic, and the different Professors in that school. In the case of *The Master, &c., of Gunmakers* v. *Fell* (Willes' Rep. 384) Willes, L. C. J., says, in page 388, "The general rule is, that all restraints of trade (which the law so much favours), if nothing more appears, are bad; but to this general rule there are some exceptions, as first, that if the restraint be only particular in re-

spect to the time or place, and there be a good consideration given to the person restrained, a contract or agreement upon such consideration so restraining a particular person may be good and valid in law. So, likewise, if the restraint appear to be of manifest benefit to the public, such a restraint, by a by-law or otherwise, may be good, for it is to be considered rather as a regulation than a restraint, and it is for the advantage, not the detriment, of trade that proper regulations should be made in it." I say that the rule or regulation in controversy, comes within this principle. The public are interested most vitally in the establishment of a complete School of Physic, and in the good government and efficiency of that school, and its Professors. That the rule was considered necessary for effectuating that object is demonstrated by the facts set forth in the 16th and 18th paragraphs of the Statement of the Provost and Senior Fellows, to which I have already called attention. In the case of *Adley* v. *Reeves* (2 Maule and Selwyn, 53), there is, in page 60, the following observation of Lord Ellenborough, C. J.:—" I believe that it is not an unfrequent by-law that members of one Company shall not be members of different Companies." It must be remembered that the rule in question never came into force until the election for a Professor which took place on the 26th of October, 1872. That election was held under the advertisement of the 2nd of July, 1872, in which advertisement the Rule or Resolution is set out. On the day of election the office of University Professor was vacant and was open for competition to all properly qualified candidates; *non constat* that Dr. M'Dowel would have presented himself as a candidate, or if he did so that he would have been elected. He had no vested right to be elected. The Rule or Resolution applied to any candidate who might be elected. This is important to bear in mind, for it has been said that the rule deprives Dr. M'Dowel of the freehold office which he held in the House of Industry Hospitals; but this was a mere accident arising from the fact that he was the candidate who was elected to the Professorship. It was his own choice to become a candidate for the office, but having become so, he became bound by the terms which were imposed equally and impartially upon all the candidates, and one of those terms was a compliance with the rule. It is a complete fallacy, therefore, to argue that the rule deprived him of anything. The rule deprived him of nothing—it was his own voluntary act in becoming a candidate upon the conditions stated in the advertisement. He must be regarded as a mere stranger proposing himself for the first time for election, and impliedly engaging that if elected he would comply with the terms set out in the

advertisement. I will now apply myself to the construction of the Statute 40 Geo. III. c. 84. It recites in its preamble that a petition had been presented to Parliament by the President and Fellows of the King's and Queen's College of Physicians in Ireland, setting forth that various difficulties had arisen in carrying certain Acts of the 25th and 36th of His Majesty into execution; that several of the provisions of the said Acts appear from experience to be now unnecessary, and others imperfect, and therefore that it is expedient and necessary for the good government of the said College, and for the advancement of the said School of Physic in the science of Medicine, to alter and amend the said Acts, and that the accomplishment of the objects of the said petition would be of great public advantage. It then proceeds to repeal the Acts of the 25th & 36th Geo. III. By section 2 it establishes certain Professorships, the holders of which are to be called the King's Professors in the city of Dublin, on the foundation of Sir Patrick Dun, and they are given a perpetual succession. By section 3, these Professors are to be paid a fixed salary out of the rents and profits of the estate of Sir Patrick Dun. By section 4, the President and Fellows of the College of Physicians are required to apply, with the consent of the Chancellor of Trinity College, or in his absence the Vice-Chancellor, the Archbishop of Dublin (who is one of the Visitors of Trinity College), the Provost of Trinity College, and the Professor of Physic in the same, or any two of them, a sum not exceeding £150, out of the surplus rents of Sir Patrick Dun's estate, as ground rent for a lot of ground on which an Hospital, to be called Sir Patrick Dun's Hospital, wherein Clinical Lectures shall be given, may be erected; and the government of the Hospital is by the Act vested in a Board consisting of the Visitors of the College of Physicians, of the President, Vice-President, and Censors of the same, of the Provost of Trinity College, and of twelve other persons to be by said Governors chosen and elected out of those who may become subscribers to the building or maintenance of the Hospital. Section 11 enacts that the King's Professors shall read and give Clinical Lectures upon the patients in the Hospital, and that the said King's Professors, and the University Professors hereinafter mentioned, shall read such Lectures during the space of three months, in alternate succession, as has been heretofore practised, or in such other order as they shall agree upon among themselves; and that every pupil who shall attend the said Lectures shall pay to the Professor whose Lectures he shall attend the sum of three guineas for each three months' course of Lectures. Section 13 then enacts as follows: "And

whereas by an Act passed in the 25th year of the reign of His Majesty King George III., it was enacted that there should be three Professors in the University of this Kingdom who should be called University Professors, that is to say, a Professor of Anatomy and Chirurgery, a Professor of Chemistry, and a Professor of Botany, and that the then present Lecturers in the said several branches should be constituted and appointed Professors in the said several branches respectively: Be it therefore enacted, that the said University Professors shall have perpetual continuance and succession, and shall be elected in the manner, for the time, and *subject to the regulations hereinafter mentioned.*" By section 14, the University Professors are to be supported at the expense of the University. By section 18 the University Professors are to be elected in the usual and accustomed manner by the Provost, or, in his absence, by the Vice-Provost and Senior Fellows of Trinity College. Section 19 prescribes that, previous to each election for a Professor, advertisements shall be published; and section 26 is in these words: "The said President and Fellows of the said King and Queen's College of Physicians shall have power from time to time to make rules and orders to regulate the conduct of the King's Professors; which rules and orders the Registrar of the said College of Physicians shall communicate to the Registrar of Trinity College, Dublin, to be by him laid before the Provost and Senior Fellows of the said College; and the said Provost and Senior Fellows, or a majority of them, together with the said Provost, shall have power from time to time to make rules and orders to regulate the conduct of the said University Professors; which rules and orders the Registrar of Trinity College, Dublin, shall communicate to the Registrar of the said College of Physicians, to be by him laid before the last-mentioned College. Provided always, that the said rules and orders shall not be inconsistent with any of the clauses or directions contained in this Act of Parliament." Nothing can be more comprehensive, general, and wide than the words and language of this section. The President and Fellows shall make rules and orders from time to time to regulate the conduct of the University Professors; and the only limitation attached to the power is, that "The rules and orders shall not be inconsistent with any of the clauses or directions contained in the Act of Parliament." It is plain and manifest, and does not require argument, that this rule is not inconsistent with any clause or direction in the Act of Parliament. Is there, then, under the section any other limitation or provision with regard to he rules and regulations they are to adopt for the conduct of the

Professors? There is none whatsoever. Let us bear in mind the scope and object of the Act of Parliament. There were two Medical Institutions, one attempted to be established by the will of Sir Patrick Dun, but which was carried into effect by Acts of Parliament. This was wholly distinct and separate from the College Medical Institution; but the object and purpose of both was the same, namely, to advance medical knowledge and science. The object of the 40th George III., ch. 84, was to blend both together, so as to form, out of the two, one complete School of Physic, and to render that school as perfect as it possibly could be; the College of Physicians and Trinity College were to co-operate for that purpose; but for the attainment of that object, and for the good government of the school so to be established, it was obviously necessary that the two co-operating Institutions should be clothed with ample powers; and accordingly, by section 26, the College of Physicians were given power to regulate the conduct of the King's Professors, and the Provost and Senior Fellows of Trinity College were given power to regulate the conduct of the University Professors, but as they were to act together, the Statute put a check upon the framing of rules; and by section 27 enacts, that if in the case of any regulation, the College of Physicians happens to be dissatisfied with rules made by the Provost and Senior Fellows, they can bring the matter before the Provost and Senior Fellows; and if they do not obtain redress from them, they can appeal to the Visitors of the University. It was impossible for the Legislature to embody in the Statute rules and regulations to provide for all necessities and contingencies that might arise in the course of time, and that would only appear in the actual working of the school, which was then only just formed and in its infancy. They, therefore, entrusted this power to the two Bodies or Corporations, which were to watch ever the school, and to exercise control over its officers; but in order that there might be perfect co-operation and a perfect system of supervision, they established by section 27 the check to which I have called attention, so that the legality and propriety of any rule made by either of the Corporations might, if necessary, be made the subject of appeal ultimately to the Visitors; and as the necessity for rules might arise on various occasions, and under ever-varying circumstances, section 26 gives the power to make rules from time to time. The rules so made are the creatures of the Statute, and if they are for any reason objectionable, the Statute gives a special means of redress by an appeal to a properly constituted and special tribunal. If the College of Physicians objected to the rule in question, they

might, under section 27, have complained to the Provost and Senior Fellows; and failing to obtain redress from them, they might have appealed to the Visitors of Trinity College; but there is no power given to any third party to complain of or appeal against any rule or regulation; and I submit there is no power given to any person to examine into the validity or propriety of any rule made under section 26, except by the means and in the way prescribed by section 27; and that if Dr. M'Dowel complained of the rule in question, he should have applied to the College of Physicians to bring the matter before the Provost and Senior Fellows, and to proceed according to the provisions of section 27.

VICE-CHANCELLOR.—The question will remain, whether it is within the meaning of the 26th section, if there be a disagreement between the two Bodies; but the question does not arise if there be an agreement.

*Mr. Tandy.*—I submit that the question cannot be raised here.

VICE-CHANCELLOR.—It can only be raised in this way—Suppose the order had been properly an order of admonition, then, on appeal, we would have been obliged to put a construction upon the 26th section, because disobedience to law would be charged.

*Mr. Tandy.*—It would be a nice question, whether even then the question could come before this Court as at present constituted.

VICE-CHANCELLOR.—Our decision might be overruled; but we could not stir a step without considering whether there had been a wrongful neglect of duty, and we would be obliged to put a construction upon the section.

*Mr. Tandy.*—I am not satisfied about that. The words of the 26th section are different from those of the 28th section. The former section is a rule in reference to "the conduct" of the Professor; the other has reference to any wilful neglect of duty on the part of the Professor; and it might be strongly urged that there might be a breach of the rule, yet not such a breach as would bring the party within the operation of the 28th section.

VICE-CHANCELLOR.—But we should have to decide the question; we could not avoid it.

*Mr. Tandy.*—That might be, irrespective of the question of the validity of the rule.

VICE-CHANCELLOR.—Suppose he was bound by the rule as a Professor—I am assuming that the rule is valid—suppose we

were to say that it was valid, it would bind him as a Professor, and obedience to it was his duty.

*Mr. Fitzgibbon.*—I understood last evening that the question of jurisdiction was not to be argued; but I am prepared to discuss the question that the University Professors always had a right of appeal under the University Statute; and it is not mentioned in that Statute, because they had the power under the Statute.

Vice-Chancellor.—As we have gone on amicably up to the present, and the desire of all parties is to get at the real points in the case, we need not encumber ourselves by discussing that question now.

*Mr. Fitzgibbon.*—I drew up the Petition, and was prepared to support it before you as Visitors of the College.

Vice-Chancellor.—I think we had better follow the learned counsel who led for the Petitioner, and not embarrass ourselves about questions as to the extent of our jurisdiction. I do not want to arrogate any power that I do not possess, nor to part with any that I have.

*Mr. Butt.*—The Statute enabling the College of Physicians to appeal against the order cannot interfere with the right of the University to appeal. Where there was a joint interest, it was unnecessary to give an appeal; but this does not say that anybody else has it.

Vice-Chancellor.—We do not want to prejudice any rights; but what I understood was desired, was to obtain a peaceable solution of the real point in dispute—first, as to the legality of the rule; secondly, the equitable or moral obligation of Dr. M'Dowel to obey it.

*Mr. Butt.*—I would like to be understood as to the second point for consideration. We ask you to consider the legality of the matter as one of the elements in determining whether it would be right to bind the Petitioner in such a manner. I think the consideration is naturally involved in the question of legality. I do not think the Board would wish to force upon Dr. M'Dowel an illegal stipulation, if it were illegal.

Vice-Chancellor.—I understand the Board to say that they acted upon a certain view as to the validity of the Resolution; and even supposing it to be a matter at the time doubtful, and which we might decide not to be legal, yet they acted upon that view, and believed that Dr. M'Dowel concurred in that view.

*Mr. Butt.*—I do not think that Dr. Ball will insist upon this.

Vice-Chancellor.—Upon what is called the *estoppel?*

*Mr. Butt.*—I said I did not think the Board would press it, nor do I understand that they do. Dr. M'Dowel did not come

in under the notice, but under the Statute, and no matter what the Board put in the notice they could not bind the candidates.

Vice-Chancellor.—I do not intend to express an opinion upon the point; but I understood yesterday that we would be disembarrassed from a consideration of the question as to the form of admonition. We were called on to say whether, upon the true construction of the Statute, the Resolution was valid; and then, suppose it to be decided that it was not so, there remained a second question, whether, in consequence of the course pursued with regard to the circumstances connected with the election, and the statement by the Board that but for what took place, and the construction put by them upon the Act of Parliament, they would not have elected him, yet that Dr. M'Dowel was bound by his own act.

*Mr. Butt.*—I did not concede that; but I said, if you considered that there was a contract that could be enforced against Dr. M'Dowel, I would not raise any objection.

Vice-Chancellor.—Suppose the Resolution not obligatory, I do not think any Court would be entitled to enforce the contract.

*Mr. Butt.*—I did not intend to give up the point at all. A bill in Chancery was spoken of, if you thought there was a contract that might be enforced.

Vice-Chancellor.—Suppose the Board said, "We will not swear him in." In point of law, though his title springs from the election, it is the swearing in that gives Dr. M'Dowel the right to the office. Suppose he applied to the Queen's Bench for an order to the Provost to administer the declaration, and the Provost made a return to the *mandamus*.

*Mr. Butt.*—We would have an action against the Provost.

Vice-Chancellor.—Suppose a return showed that the election had taken place pursuant to the notice, it might be proved to be a void election.

*Mr. Butt.*—The notice of election simply states a thing that was true—the Resolution of the Board.

Vice-Chancellor.—I do not know what the Queen's Bench would do now; but in my day, when practising at the Bar, they would, if they considered that there was anything in the notice that should not be, have declared that the notice had not set forth the proper conditions. I remember a case in which I was myself engaged—*Smyth* v. *Darley*. Both parties claimed a right under an election; but the Court said it did not lie in the mouth of either of them to say that the election was void, but granted a *mandamus* to enable the Lord Mayor to raise the question on the return, and have it decided whether or not the election was void?

*Mr. Butt.*—I am willing to let this Court decide the question in the same way as the Court of Queen's Bench would decide it upon *mandamus*.

Vice-Chancellor.—Suppose that we decide it is a void election.

*Mr. Butt.*—If you decide he cannot be sworn in?

Vice-Chancellor.—Will you, if a *mandamus* is granted, and the Provost makes a return, leave to us to decide whether it was or was not a void election?

*Mr. Butt.*—If you have a return to the *mandamus* upon a strictly legal ground, we would leave the question to your decision.

Dr. Battersby.—All comes round to the starting point at last—was it legal?

*Mr. Fitzgibbon.*—All we want to guard against is an order that an illegal rule is binding upon us.

Dr. Battersby.—You will not expect us to say that though a rule is illegal it is binding upon you.

*Mr. Fitzgibbon.*—The first question is, whether it is illegal. If it is legal it must be binding, and the alternative proposition must be, that if it is illegal it is not binding.

*Mr. Butt.*—We shall leave the question to be considered by the Visitors. It would come round in the end to this, would the insertion of an illegal rule enable the Court to vitiate the election, because Dr. M'Dowel did not submit to it? If he resigned the office there would not be any question.

Vice-Chancellor.—Suppose we think that it could not be legally enforced, might not Dr. M'Dowel be precluded from objecting to it? Might we not say that it did not lie in his mouth to raise any point against it?

*Mr. Butt.*—If he is legally bound by the rule you must say so.

Vice-Chancellor.—And that it can be enforced?

*Mr. Butt.*—Is not that the same as saying, "legally bound."

Vice-Chancellor.—No. Suppose as between him and the Board, he could not legally rely upon the objection.

*Mr. Butt.*—I do not exactly see what the effect of that would be.

Dr. Battersby.—That would turn upon the position of the College that he is bound by the contract—*the estoppel*—and that must be also disposed of.

*Mr. Butt.*—I have no objection to its being asked, was there a legally binding contract? If that would assume a different shape when the first question has been decided, we might say a few words upon it. I am willing that it should be asked—is the rule binding?

VICE-CHANCELLOR.—You would not add to it whether it could be enforced, but decide it as between Dr. M'Dowel and the College—the other consideration springing out of the interests of third parties.

*Mr. Butt.*—I do not want that.

VICE-CHANCELLOR.—A thing may be absolute upon broad principles, though a Court might not interfere to give effect to it for the advantage of either party; as between them, neither had a right to say anything. First, we were asked to decide the legal question.

*Mr. Tandy.*—You will find in the case of *The King* v. *Trevenen* (2 Barn. & Ald. 339), the point decided that a person cannot come forward as relator in a *quo warranto* information to complain of the invalidity of an election at which he was present and concurred.

*Mr. Butt.*—If there is a binding contract we must submit.

VICE-CHANCELLOR.—Binding between the parties.

*Mr. Butt.*—I do not think there is any evidence of a contract.

VICE-CHANCELLOR.—I am looking at it in all the aspects in which it may appear.

*Mr. Butt.*—There are two ways in which it might be regarded. First, whether the election is void? second, has Dr. M'Dowel entered into such a contract as would make him resign the Professorship or his office in the Whitworth Hospital? The two questions are distinct. The second proposition goes upon the supposition that the election is valid, and I ask, is there such a binding contract as to justify his being called upon to resign his Professorship, or Lectureship? But that proceeds upon the supposition that there has been a valid election.

VICE-CHANCELLOR.—As between Dr. M'Dowel and the College.

*Mr. Butt.*—Yes.

*Mr. Tandy.*—I am prepared to argue that upon the broadest principles. I only ask the Court not to be dragged into the consideration of anything which is not within its jurisdiction.

DR. BATTERSBY.—This disposes of all that Mr. Butt has said, and brings us back to the question—is it legal?

*Dr. Ball.*—The technical question as to the Archbishop being out of the case, there is nothing else that can be raised; and I do not see the use of a discussion upon these points. I am anxious about the rule a great deal more than anything else.

*Mr. Tandy.*—The only limitation placed upon the 26th section of the 40th Geo. III. is that the rules which it empowers the Colleges to make, shall not be inconsistent with any of the

clauses or directions contained in the Act of Parliament. This is the largest power that could be given; and the word "conduct" is also as large an expression as could possibly be used. It was used of necessity and advisedly—having regard to the object that the Legislature had in view—to establish a complete School of Physic by the quasi amalgamation of the two Bodies, and by giving them a joint control and supervision over the Professors. I submit that the word "conduct" is large enough to enable the Provost and Fellows to make the rule in question; that rule has been sanctioned by the College of Physicians, who a fortnight afterwards made a similar rule to regulate the conduct of their Professors. They had the power of bringing the matter before the College and its Visitors; and by not taking the step provided for by the Act of Parliament, nay, further, by their adoption of the rule, they, as a constituent part of the School of Physic, have shown their approval of the rule. In what way is the term "conduct" to be limited, and what is the extent of the power of the Provost and Senior Fellows to make rules? If the Board passed a Resolution that the Professor of Anatomy should attend the College from 9 a.m. till 6 o'clock, p.m., each day, would not that be a rule regulating his conduct? I put the case in the light in which it was placed by Dr. Ball: assuming that the College made a rule of that description, and that they considered it necessary, would that rule be invalid under the Act? Would not that be a rule to regulate the conduct of the Professors? Dr. Battersby made an observation as to their framing a rule, that the Professor should reside within two miles of Sir Patrick Dun's Hospital, and asked would not such a rule be within their powers? And let me ask, if they considered a rule necessary for the interest and efficiency and proper working of the School of Physic,—especially having regard to Sir Patrick Dun's Hospital, and the discharge of his duty by the Professor of Anatomy—what is there in the Act of Parliament to say that it is illegal? The meaning of the 26th section is to enable the Board to make such rules relative to the conduct of the Professors, in reference to the School of Physic, as in their opinion are necessary for the well-being of the Profession and the School, and would prove conducive to its interests and usefulness. There is not anything else to limit it; and it is a curious fact that the same word "conduct" has been used in the Act 25 Geo. III. ch. 42, sect. 22, which has been repealed. I pray, in aid of this construction, the remarkable provision made by section 27, to which I have already called attention; and these sections are followed up by section 30, which enacts, in refe-

rence to the University Professors, that if the President, or, in his absence the Vice-President and Fellows of the College of Physicians, shall at any time be dissatisfied with the conduct of any of the University Professors, and after complaint made by them to the Provost, or, in his absence, to the Vice-Provost and Senior Fellows, redress shall not be given in ten days after such complaint shall be preferred, the same may be laid by the said President, or, in his absence, the Vice-President and Fellows of the College of Physicians, before the Visitors of Trinity College, Dublin, which said Visitors shall summarily hear the matter of the said complaint, and grant redress in case the same shall appear to be well founded, and if otherwise shall dismiss the same. This provision in reference to the course which is to be adopted where the "conduct" of a University Professor is complained of, is quite separate and distinct from that which is prescribed by sections 28 and 29, in the case of a wilful neglect by any Professor to perform the duty of his Professorship; and I again ask, what are the rules which the Provost and Senior Fellows are to be authorized to make under section 26? The Clinical Lectures and the remuneration for them are specifically regulated by section 11. The Professorial Lectures, as they are called for distinction sake, are regulated by section 31; and power is thereby given to the Provost, or, in his absence, the Vice-Provost and Senior Fellows of Trinity College, to direct that the Lectures on Botany shall commence at and continue to any other time, as they from time to time shall think proper. By section 32 the Lectures are to be delivered in English, unless otherwise specially ordered, and until the Hospital is built the Provost is to provide rooms for the delivery of the Lectures. By section 33 power is specially given to the Provost and Senior Fellows to regulate the fees which are to be paid by persons attending the Professorial Lectures of the University Professors. Specific provision is therefore made by the Statute for every thing then considered necessary for the requirements of the school; but in the progress of time—when the Hospital was built and in working order, when other Medical Institutions might spring up in the city of Dublin, when population might increase, and the calls upon the time and attention of the members of the Medical Profession might become more numerous, when it might become the interest of medical men to attract pupils from one Hospital to another—these and all other changing circumstances might and naturally would require that a power to make rules to meet such changes should be vested in some Body; and in whom could that power be more properly vested than in the two Corporations who were

to create, as it were, a complete School of Physic, and to watch over its interests and efficiency; and I submit that section 26 was passed in great measure, if not altogether, to meet and provide for such contingencies. I therefore submit that the words of the section are amply large enough to carry out this object of the Legislature; that they are of most extensive signification, in fact the largest words that could be used, and that they must be taken to embrace every rule and regulation which the authorities of Trinity College considered to be necessary and beneficial for the School of Physic, and proper to be imposed upon the Professors: and if any rule is adopted, which is not reasonable and proper, having regard to the requirements of the School, the propriety of it can be questioned and investigated by the Body to whom the power in that behalf is given, namely, the College of Physicians, with an ultimate appeal under section 27 to the Visitors of Trinity College. As to the second branch of the case:—Under the circumstances disclosed, and upon the various documents before this Court, there is a contract, which is binding upon Dr. M'Dowel, and to which he was bound to pay attention and to yield obedience, assuming that the rule was valid. There was another point about the oath or declaration not having been administered to him, but I really do not think there is any weight in that matter.

Vice-Chancellor.—We may treat Dr. M'Dowel as if he had been admitted.

*Mr. Tandy.*—He is discharging the duties.

Vice-Chancellor.—And is in fact admitted. The declaration should have been tendered to him, or he should have asked to have had it administered; so that it does not lie in the mouth of either party to complain.

*Mr. Tandy.*—Take the 23rd and 29th paragraphs of the Petition of Dr. M'Dowel. The 23rd declares that on the 26th of October, 1872, he was elected Professor. The 29th paragraph treats of the declaration which he was required to make, and complains that he had not been given any opportunity of attending before the College to take it. If the Resolution were a binding one, how does the matter stand? The advertisement, under which the election took place, contained an intimation that no office in any Clinical Hospital other than in Sir Patrick Dun's Hospital should be held by the Professor. He became a candidate under that notice, which appeared in the *Dublin Gazette* on the 2nd of July, 1872, and in the month of September following he wrote a letter to the Board, offering himself for re-election to the Professorship:—"I beg to offer myself for re-

election." These were his words in this formal application, which was made two months after the publication of the notice, and in pursuance of it. About this there cannot be any doubt. This being the case, I may further observe that Dr. M'Dowel uses these expressions in his communication to the Board :— " The announcement of the approaching election for the Professorship contains, in some instances, an addendum, intimating that the Board of Trinity College will give a preference to a candidate who will relinquish the practice of his profession." He raises strong objections to any interference of this kind, and uses arguments which evidently prevailed with the Board. Although it is worthy of remark, that in the official advertisement which the Board were bound to publish, there is not any reference to the surrender of the private practice, it is plain from the tenor of the entire letter, that when it was written, and he became a candidate, he was quite aware of the advertisement, and he must be taken to have been so. It is a remarkable fact, which bears strongly upon the case, that in this letter he never alludes to the portion of the advertisement that relates to his giving up Whitworth Hospital, whilst he raises objections to being obliged to forfeit his private practice. He never declares that he will not be bound by the advertisement. This is followed by the election. What is the result ? The election takes place pursuant to the advertisement, and he does not raise any objection. Does not the circumstance of his raising an objection in one instance, and omitting it in the other, lead to the inference that he had not any objection to urge except that in reference to the relinquishment of his private practice ? He is elected upon the faith of this, yet I am told there is not upon his part an implied contract. By not raising any objection, he left the Board under the impression that he would comply with and yield to the terms of the advertisement, while there was in his mind an *arrière-pensèe*, a something lurking, a secret intention, that if he were elected he would not comply with the terms of the notice. He procured his election by an apparent acquiescence in the terms of the advertisement, which set out the Resolution. By this apparent acquiescence he secures the votes of the majority of the electors; and then when the election is over, and he thinks he is safely established in the Professorship, he turns round, and says I will not comply with the terms, upon the faith of my compliance with which I got the votes of the electors. In the case of *Boyton* v. *The College of Physicians* (3rd Ridg. Par. Cases, 433), the principle I contend for is laid down. Dr. Boyton and others were elected to the office of King's Professors in Dublin

under the 15th of George II., which carried into effect the intention of Sir Patrick Dun, relative to such Professors. A public advertisement announced on behalf of the Defendants that the offices would be filled up, and the Professors would, amongst other emoluments, be entitled to £100 per annum. After they had been elected they raised crotchets upon a Statute which Lord Clare said was "a model of legislative puzzle and perplexity," and claimed to be entitled to share the profits of former Professors which would exceed the £100 per annum. At page 458, Lord Clare thus says:—"But these gentlemen know little of the principles of a Court of Equity, if they suppose that they can succeed in such an attempt. They will find themselves grossly mistaken, if they suppose that they will be received in a Court of Equity to commit a fraud upon a great and useful public Institution, and in open violation of a plain implied engagement on their part, to swallow up the whole of the fund appropriated by the Legislature to the support of it; and, therefore, I do not feel it in any sort necessary in this case to determine upon the construction of this Act of Parliament, under which of the three contradictory clauses relating to this subject, the *quantum* of salary, which each of the Appellants claims, ought to be ascertained, because they have by their own acts, in my judgment, unequivocally bound themselves in equity to accept each a salary of £100, and no more."

Vice-Chancellor.—A Court of Equity will not assist such a party.

*Mr. Tandy.*—But the present case is much stronger than that which I have cited, and may be regarded in another point of view. Dr. M'Dowel is the moving party in the present proceedings; he has presented a Petition asking for a declaration that he is not bound to resign the appointment in the Whitworth Hospital, and that the rule is *ultra vires* and void. Can he be heard in asking such relief after he has pursued the conduct to which I have called attention? In Grant on Corporations, page 78, this principle is enunciated: "It is not competent to a person who has voluntarily become a member of a Corporate Body to set up the objection to a by-law which he is called upon to obey, that the Corporation had no power to make such a by-law. The same principle is laid down in the case of *King* v. *Clarke* (1st Salkeld, 348); also in the case of *The London Tobacco Pipemakers Company* v. *Woodroffe* (7 Barn. and Cres., p. 838); and I have already cited *R.* v. *Trevennin* (2 B. and Ald. 339). I submit, therefore, firstly, that the rule is within the Act. There is a special relief against the rule, if it is considered by the College of Physicians to be an improper rule; and they have not only not adopted that course,

but passed a Resolution to the same effect. Secondly: Dr. M'Dowel, as between himself and the University, is bound by the terms under which alone they elected him, and his conduct precludes him from getting relief. The next branch of the case is in reference to the fees in the Dissecting School; and it appears to me that it only requires a careful consideration to see how these matters stand. There were Lecturers in Trinity College from a very early period, on Anatomy, Chemistry, Chirurgery, and Botany. The Lecturers were officers of the College, and under its control; they existed when the Hospital of Sir Patrick Dun had not any existence; and the position in which they stood has been clearly pointed out by the first four paragraghs made in the Statement of the Board:—

"1. At a very early period three Lectureships for the teaching of Anatomy and Surgery, Chemistry, and Botany, were established in Trinity College, by the Provost and Senior Fellows of the said College, and were supported out of the funds of the said College; and the said Lecturers were officers, and under the control of the said Provost and Senior Fellows, as the governing body of the said College.

"2. On the 5th day of February, 1711, the then Provost and Senior Fellows of the said College passed the following Resolution:—'At the request of the College of Physicians for the promoting the study of Physic, ordered by the Provost and Senior Fellows, that, besides the usual acts, every Candidate Bachelor of Physic be examined in all the parts of Anatomy relating to the *Œconomia Animalis*, and in all the parts of Botany, Chemistry, and Pharmacy. Every Candidate Doctor to be examined as to the aforesaid subjects, and likewise in the explication of Hippocrates and Aphorisms, and the theory and cure of external and internal diseases; and the President and Fellows of the College of Physicians to examine.'

"3. The following entry appears in the books of the College, under the date of the 8th September, 1716:—'This day Doctor Robinson and Surgeon Greene were, by the Provost and Senior Fellows, appointed to officiate in the Anatomy School as Lecturer and Anatomist.'

"4. The following entry appears in the said books, under the date of the 19th June, 1717:—'The same day Dr. Robinson was, by a majority of voices, turned out from being Anatomist, and Doctor Nagle elected to the same. Ordered that the Bursar pay £60 to Surgeon Greene, in order to purchase preparations for illustrating several parts of the human body.'"

It appears that one of the Professors became boisterous, and

excited the animosity of the College, and that he was turned out.

Vice-Chancellor.—You would not follow that practice?

*Mr. Tandy.*—It is a very ancient custom. The existence of that school, as a distinct Medical School, is recognised by the 15th of George III. (1741). Mr. Butt has mixed up the King's Professors and the University Professors as if they were identical in all respects; but they were always perfectly distinct and separate. They had statutable duties common to them all; but in addition, the University Professors had duties as officers of Trinity College. These distinctive characteristics were preserved even by the Statute 40 George III., ch. 84, because the University Professors are to be supported by the University. They are not to be elected by the College of Physicians, but according to the usual manner and custom of the University. As a part of the staff in College there was an Anatomy Professor established in 1716; in addition to that, the College built Lecture-Rooms out of their own funds, and appointed Demonstrators. The Act of the 40th of George III. declares that until Sir Patrick Dun's Hospital shall be built, there should be rooms in Trinity College allotted for the delivery of Lectures. How has the College acted from that day to this? Although the Hospital (Sir Patrick Dun's) has been built, they have allowed the Lectures to be delivered in their own building; they have not called upon the Professors to go to Sir Patrick Dun's.

Dr. Battersby.—I understood Mr. Butt to say that upon the passing of the Act, the seven Professors constituted the School of Physic, and were entitled to apply the fees for Lectures in a certain way, and then the two Institutions became one Body, blended and moulded together, entitled to the entire of the fees.

*Mr. Tandy.*—It is shown that there was a distinct medical teaching body in the College, and this was not interfered with in the slightest degree by the Statute. The way in which confusion has arisen is, that since the appointment of a Professor of Anatomy under the Act of Geo. III., the University has made that Professor the party to superintend the discharge of the duties connected with their peculiar medical department in the College, in addition to his own special duties under the Act of Geo. III. He has distinct duties under the Act of Geo. III., and also distinct duties in connexion with the Dissecting-room in College; but in consideration of his so performing the duties in the Dissecting-room he was permitted, till recently, to receive the surplus of the fees arising out of the Dissecting-room, after he had paid all necessary expenses. He was allowed to receive this

in addition to the income which he derived under the 40th of Geo. III.

Vice-Chancellor.—A share of the fees.

*Mr. Tandy.*—Yes, the fees payable for instruction in the Dissecting-rooms. Until recently these fees did not appear in the books of the College. The Professor was allowed to manage everything himself. He paid for dead bodies and demonstrators, and was allowed, until a recent period, to receive the fees.

Vice-Chancellor.—He was elected in the College, and had a right to the fees. The Statute makes him a Professor of the University—he is that in the School of Physic, a statutable Professor, as was forcibly put by Dr. Ball: then the question arises, whether the object was not to combine it with Sir Patrick Dun's, and whether it was not proper for the College, under their powers, to appoint a Professor of Comparative Anatomy—whether you can put him into the other establishment, to the prejudice of the staff that were there at the passing of the 40th Geo. III.

*Mr. Tandy.*—He is a statutable Professor, but *quoad* the duties in the Dissecting-room, he is only an officer of the College, and as such was allowed to receive the fees arising from such Dissecting-room, and from demonstrations therein.

Dr. Battersby.—In what manner are they shown to be distinct?

*Mr. Tandy.*—Under the 40th of Geo. III. he is entitled to two distinct classes of fees, and two distinct duties have been imposed upon him; first, under section 11, which obliges him to deliver Clinical Lectures in Sir Patrick Dun's Hospital, and secondly, by sections 31, 32, and 33, he is bound to deliver Lectures called Professorial Lectures, and is entitled to receive fees for them. The Lectures of each Professor "shall commence on the first Monday in November, and continue until the end of April;" and by the 33rd section, the Professors specified in the previous sections may charge reasonable fees. The King's Professors and the Professors of the University are both included. You perceive that the University Professors are to deliver Clinical Lectures in conjunction with the King's Professors, which are paid for as prescribed by the Statute, and they are also, in conjunction with the King's Professors, to deliver Professorial Lectures, and are entitled to charge reasonable fees for those Lectures.

*Mr. Butt.*—If they regulate the amount, is not the Professor entitled to fees?

*Mr. Tandy.*—Yes, but these are fees for Lectures delivered there. The fees for Dissection are distinct from the fees receivable under the Act of 40 Geo. III., and accordingly the King's

Professors are not entitled to, and have never claimed, any portion of such fees. They perform no duties in the Dissecting-room, which is exclusively a College Institution. Dr. M'Dowel's letter of September, 1872, shows the difference. In this he shows how the Medical Schools increased and prospered. He then gives a Table with two columns, from which it appears that in the Session 1858–1859, the number of pupils entered for Professor's Course of Anatomy amounted to forty-three; and the number of pupils entered for dissection was the same. In Session 1859–1860, the number in the first department was fifty-eight; in the second, sixty-two; showing, in the second department, an increase of four. In Session 1860 and 1861, ninety-five in the first department, and 102 in the second, showing an increase of seven in the second department.

Vice-Chancellor.—Was there any dissection or were there any demonstrations in Sir Patrick Dun's Hospital?

*Mr. Tandy.*—No practical dissection.

Dr. Battersby.—Was that right? Should there not be Lectures in some place?

*Mr. Tandy.*—There were Professorial Lectures delivered by the Professors; but there were no dissections. I shall still further show you the distinction between the two. In the letter of Dr. M'Dowel to Mr. Toleken, dated October 22, 1872, he gives an account of his emoluments as Professor, and sets forth the various sources from whence his income has been derived. These are, salary, £250; Lecture fees (average), £226; Clinical fees (do.), £32; Dissecting fees, £400; Examination fees, £15; total, £925 a year, which income might increase as the school increased in numbers. Let us contrast this with the income of a Professor in the King and Queen's College of Physicians under the Statute. His salary would be £100 a year; he also would have the Lecture fees and Clinical fees, so that his income would be about £350 a year. Does not this table show the distinction between the two?

Vice-Chancellor.—That would be a very shabby salary to give an eminent man.

*Mr. Tandy.*—That may be the case, but it shows that the two sources of income were distinct. The King's Professor delivered the same course of Professorial and Clinical Lectures, but he never came into the Dissection-room. I use this argument to show the distinction between the two cases.

Vice-Chancellor.—That is to say, they could not come in here to claim Professorial Lectures.

*Mr. Tandy.*—There is a complete distinction between the

Dissection-room fees and those paid for the other duties discharged: in fact, when Sir Patrick Dun's Hospital was built, all the statutable Lectures should have been delivered there.

VICE-CHANCELLOR.—Would you say that the Dissection-room did not at all belong to the School of Physic?

*Mr. Tandy.*—Certainly not, under any of the Acts.

DR. BATTERSBY.—Had they not always the use of the room; had not the King's Professors the use of it?

*Mr. Tandy.*—The King's Professors had not the use of the Dissecting-room: the University Professor is a statutable Professor, *quoad* the duties imposed by the Statute, but the Statute does not impose any duties with respect to dissections or demonstrations. I admit that if the fees in the School of Anatomy, or rather the Dissecting-room, were imposed by Statute, the Board could not touch them, but they are outside the Statute; the Board have kept them under their control, irrespective of the Statute; and they have made rules with regard to the School of Anatomy or Dissecting-room, irrespective of the College of Physicians.

DR. BATTERSBY.—Are none of the Lectures provided for by the 40th of George the III., delivered in the Lecture-room?

*Mr. Fitzgibbon.*—Yes.

*Mr. Tandy.*—There are no Professorial Lectures delivered in the Dissecting-room.

*Mr. Fitzgibbon.*—The Lectures delivered by the Professor of Anatomy take place in the Lecture-room.

*Mr. Tandy.*—That is not the Dissecting-room, in which there are only demonstrations and not Lectures; and I find a regulation in the College Calendar that Dr. Bennett should, in the Dissection-room, deliver, not Lectures, but simply demonstrations; and the advertisement of the 2nd July, 1872, to which I have alluded, distinctly points to the different classes of fees.

VICE-CHANCELLOR.—The argument of Mr. Butt was that they had the power amongst the staff of regulating the distribution of the surplus fees; but he contended that it would be diverting the fees improperly if they were to apply them to other purposes—appropriating the fees to Comparative Anatomy would, in his opinion, be a misappropriation of them.

*Mr. Tandy.*—Mr. Butt omitted a matter. It is well to call the officer "Professor of Comparative Anatomy," but he is likewise a Demonstrator in the Dissection-room.

VICE-CHANCELLOR.—Is that in his appointment?

*Mr. Butt.*—We object to this. To send a Professor of Comparative Anatomy to take the knife out of the hand of the

Professor of Anatomy, is to destroy the School of Physic. It is not in his appointment to do so, but they make him do it.

*Mr. Tandy.*—He is a Demonstrator quite as much as any other Demonstrator, and the College can deal as it thinks best with its own officers and Dissecting-room.

Vice-Chancellor.—It would seem to me that it would be proper for a Professor of Comparative Anatomy to go into a Dissecting-room to explain the subject to his pupils.

*Mr. Tandy.*—It is in the summer that he delivers his Lectures on Comparative Anatomy, but the operations in the Dissecting-room proceed in the winter.

Vice-Chancellor.—If the Board consider that it is subservient to his duties that he should go into the Dissecting-room?

*Mr. Tandy.*—They have that power. I shall merely allude again to the Resolutions, for the purpose of showing you the control which the Board have kept over the Dissecting-room. In paragraph 9 of the Answer of the Board, they say as follows:—

"9. For a long series of years there has existed in Trinity College a building appropriated to the purposes of Dissections and Demonstrations. This building was erected at the expense of the College, and has been maintained partly out of the College funds and partly out of students' fees; and large sums of money have been expended by the College in its erection, enlargement, improvement, and maintenance. It is not subject to the provisions of the said Act, and has always been regulated by rules and orders from time to time made by the said Provost and Senior Fellows, as the governing body of Trinity College, and not under or by virtue of any authority given to them by the said Act; and the said Provost and Senior Fellows have also nominated and appointed the Professor and the University Anatomist to attend in such Dissecting-room and Demonstrations, and generally exercised control over the same, although, in making such rules and regulations, and in the appointment of such Lecturers and officers, they may have consulted the Professor of Anatomy."

Twelve years—May, 1861—the Provost and Senior Fellows made the following rules in relation to the Dissecting-room fees:—

"It is resolved, on the recommendation of the Professor of Anatomy, with the concurrence of Mr. Barton and Mr. Bennett, that the following regulations shall be of force until the year 1865, when Dr. M'Dowel's term of office as Professor of Anatomy will expire:—

"'1. The Board appoint Mr. Barton University Lecturer in Practical Anatomy, and Mr. Bennett Assistant Lecturer.

"'2. In the event of either of these offices becoming vacant, before the period above alluded to, the Professor shall recommend to the Board a fit and proper person or persons to succeed to the vacant office or offices.

"'3. The pecuniary arrangements now in force between the Professor, Mr. Barton, and Mr. Bennett, shall continue during the residue of Dr. M'Dowel's term of office—no change to be made without the consent of the parties, and the approbation of the Board.

"'4. At the termination of Dr. M'Dowel's term of office, in 1865, the Board shall be at liberty to make new regulations for the Professorship, and to re-appoint or not any or all of the gentlemen holding the above-mentioned offices.'

"The Board agree to adopt the foregoing Resolutions, as recommended to them; but the Professor of Anatomy must be still held responsible for the efficiency of the instructions given in the Dissecting-room, and it will be his duty to report any negligence to the Board."

I submit, upon the whole of this case, that Dr. M'Dowel has no such right to the fees as he claims; and he is not entitled to anything incident to his office, except the fees that were given by the Statute. From the earliest period the Board kept the rules under their control, and always claimed a right to distribute the fees amongst the officers. Dr. M'Dowel has been re-elected; he comes into office under a specific advertisement, and I submit that he has no right to the privileges which he claims in his Petition.

*Mr. G. Fitzgibbon, Q. C.*—I appear on behalf of Dr. M'Dowel, and I should like to let the Visitors know the way in which I think the case should be discussed. I desire that it should be seen that I do not intend to leave any part of the case undiscussed. Dr. Ball has said that there are two questions for consideration. First, was Dr. M'Dowel bound to resign his office in the Whitworth Hospital? Secondly, was the taking away of a portion of the fees for dissections, and giving it to the Professor of Comparative Anatomy, a lawful act? A third question has been suggested by Mr. Tandy, namely, whether, assuming that the regulation as to the Whitworth Hospital was not sustainable, Dr. M'Dowel should be held bound by it? With very great respect, I am unable before a judicial tribunal, and as a lawyer, to discuss this question, except in either of two views.

I can understand that a man should be held bound by a Statute in a Court of Law, or in a Court of Equity, but unless he is bound by some principle recognised by a Court of Law or a Court of Equity, I cannot understand any circumstances in which a thing ought to be at all enforced.

VICE-CHANCELLOR.—He might be bound relatively as between him and the College; but a Court of Equity might not assist either party to effectuate or repudiate the contract.

*Mr. Fitzgibbon.*—We must discuss it thus—whether it is a contract or understanding that should be enforced according to the principles that control a Court of Equity as to good faith and fair dealing? We can discuss whether, upon the conduct of the parties, it can and ought to be enforced; but unless there is something to bring it within the principles acted on by a Court of Equity, I do not see how it can be maintained.

VICE-CHANCELLOR.—A Court of Equity might not allow a party, for his own advantage, to set up a claim; on the other hand, it would not give assistance to either of the litigants to work out their contention. It might not assist either the one party or the other.

*Mr. Fitzgibbon.*—If you permit me I will show how, in my opinion, the matter should be discussed, but I must protest against the application of any principle which has not been or cannot be recognized by some Court of Law or Equity.

VICE-CHANCELLOR.—You need not be uneasy about the way in which the question must be regarded. If I have any tendency, it is towards a scrupulous adherence to the principles of law.

*Mr. Fitzgibbon.*—I shall discuss the question, whether, within the Statute, the regulation is legal? This divides itself into two parts—first, is it a rule to regulate the conduct of a Professor, then is it consistent with the clauses of the Act of Parliament? I admit that any rule that regulates the conduct of a Professor has, if made under the Statute, the validity that it would have if it were embodied in it; but this must be subject to the limitation that it is not inconsistent with anything else in the Act. If I am able to show that it is not legal, I can only understand Dr. M'Dowel's being bound by it, either as a matter of contract, or if a Court of Equity would enforce it, upon the theory of Mr. Tandy that it would be a breach of faith not to act upon it, or if Dr. M'Dowel is not in a condition to deny its validity. This, I think, exhausts all the questions with regard to the regulation in reference to Whitworth Hospital. The next question is, whether taking away the fees and appropriating them to the Profes-

sor of Comparative Anatomy is lawful? I cannot put it upon a more unfavourable basis for myself than this—are they fees which a Professor is entitled to charge under the 40th of George III.; and if they be not, are they under the circumstances payable to the Professor, or subject to his jurisdiction? I propose to take this point first, as Mr. Tandy discussed it last, and I am willing to concede everything said by him—that every word he said is true—but I say that it is beside the question which you have here to determine. The Dissecting fee is a separate fee, payable by a different class of students, at a different time, and different in amount from the statutory fee for Lectures; but he is not aided unless he shows that it is not payable to the Professor under the Statute. I am sorry to say that a great deal of the argument will depend upon dates and documents, and I protest it is only by mixing up dates and documents, and treating the transactions of 100 years as if they had occurred at once, that even a question can be raised in this case. There was not any Anatomical School, nor any Dissecting-room in Trinity College when the will of Sir Patrick Dun was executed. The date of his will is the year 1704, when there was not any Medical School in Trinity College. When making the will and executing the trust deed, he was providing for a complete School of Physic, upon a site that was vacant and suitable; he therefore provided, in order to carry out his intentions, for the appointment of either one or two Professors, according as his property turned out to be sufficient: and he declared the objects to which he intended devoting his bequest to be the reading of Public Lectures and establishing Classes for Dissections. By the 36th section of the 40th of George III., the Statute of the 15th of George III. is kept in force. Having in 1704 executed the deed, Sir Patrick Dun got a Charter, or rather a Charter was granted after his death, in the second year of King George I., thus incorporating a King's Professor of Physic upon the foundation of Sir Patrick Dun:—"Know ye, therefore, that we of our special grace, certain knowledge, and mere motion, by and with the advice and consent of our right trusty and well-beloved Councillors, have granted, ordained, constituted, and appointed, &c., that there shall be for ever within our said City of Dublin, in our said Kingdom of Ireland, a Professor of Physic, to be called and known by the name and title and style of the King's Professor of Physic, in the City of Dublin, &c." If the language of this Charter is clear on any point, it establishes that the duty of King's Professor consisted not only in the

delivery of Lectures upon Dissection, but upon Botany also; Demonstrations, Dissections, and attending the Botanical Gardens are all included in the Lectures that shall be delivered during Term time. We have it therefore that the King's Professor of Physic, as created upon the foundation of Sir Patrick Dun, was bound to dissect and demonstrate plants upon the same terms as he was bound to lecture.

Vice-Chancellor.—Have they acted in accordance with the Charter?

*Mr. Fitzgibbon.*—It was changed. It is nothing but the confusion that has arisen upon this document that renders the argument at the other side for a moment sustainable. The original Charter imposed all the duties upon the King's Professor. Under the 15th of George II. that Corporation was wholly dissolved; but you will find that other provision was made for the performance of the duties, and the contention here would have the effect of taking the Laboratory from the Professor of Chemistry and the Botanical Gardens from the Professor of Botany. I have come only to the 2nd of George I., and my argument is, that the duties of King's Professor included all the duties which are set forth in the will of Sir Patrick Dun to have been in his contemplation. The 15th of George II. recites—" Whereas, by the said deed, and bearing date, &c., and signed and sealed by said Sir Patrick Dun, he, among other things, declared it to be his desire and intention to make provision for one or two Professors of Physic, if the maintenance should prove sufficient; to read public Lectures, and make public Anatomical Dissections of the several parts of human bodies, or bodies of other animals; to read Lectures of Osteology, bandage, and operations of Chirurgery; to read Botanic Lectures, demonstrate plants publicly, and to read public Lectures on the Materia Medica, for the instruction of students of Physic, Surgery, and Pharmacy." We have here a legislative declaration that amongst the duties of the Professor were included Demonstrations of Plants, and Lectures upon human bodies or bodies of other animals. Then comes the recital:—" Whereas, since the decease of the said Sir Patrick Dun, the rents of the real estate, so by him devised as aforesaid, are considerably improved and risen, and likely to rise yet much higher, insomuch that they, together with the produce of the residue of his personal estate so devised and decreed as aforesaid, will afford a competent provision for three Professors." There is next a recital that in the period between 1704, when Sir Patrick Dun made his will, and the date of the Statute, some of the

objects had been otherwise provided for—1741 is the date of the Statute—look to the Calendar. In 1711 three Lectureships had been established in Trinity College—first, Anatomy and Surgery: secondly, Chemistry; thirdly, Botany; all of these were established in the same year, therefore the subjects which had been provided for, as recited in the Statute, were Chemistry, Botany, and Anatomy. How have these departments been provided for? By the creation of a School of Anatomy, in which the Professor was bound to dissect. It is made as clear as daylight, by reading in connexion with the Statute the Resolution of 1711, appointing the University Anatomist. Therefore, you have the office carried on. You have what are called Lectures on Anatomy, which include Dissections, and the Lectures delivered in the Anatomy School. You find that in 1716, the Professor had an Anatomist to assist him, and that before 1800 that Anatomist had ceased to exist. He was not created at the same time as the Lecturer on Anatomy—he was created in 1716. Does not the entry of 1716, read in connexion with the Statute, put it beyond all doubt that one of the duties of Lecturers in Anatomy was to dissect in the Anatomical School? You then find that all the other duties that were provided for by the will are ensured by the appointment of the three Professors. Take away the departments of Anatomy, Botany, and Chemistry, and the Demonstration of Plants, you leave nothing behind but the practice of Physic, Pharmacy, and *Materia Medica;* you find that the three Professors upon the foundation are the Professors of Physic, Surgery, Pharmacy, and *Materia Medica*, and these with the three University Professors exhaust the duties of the original King's Professor of Physic. It is a remarkable fact that the only portion of Sir Patrick Dun's will remaining uncovered is the Professorship of Comparative Anatomy, because no provision has been made for the examination of the bodies of other animals, but by the Act of George III. this omission was filled up—a Professor of Natural History was formed upon the foundation of Sir Patrick Dun, and Anatomy and Surgery were joined together. The Statute of the 15th of George II. is followed by the Statute which is repealed by the 40th of George III.; but my contention has been proved, that the Dissecting School is a part of the School of Physic:—

"Whereas, three Lectureships have been many years since established in the University of this Kingdom for the teaching of Anatomy and Surgery, Chemistry and Botany, be it enacted by the authority aforesaid, that there shall be three Professors in the University of this Kingdom, which shall be called University

Professors, that is to say, a Professor of Anatomy and Surgery, a Professor of Chemistry, and a Professor of Botany, which said University Professors shall have perpetual continuance and succession, and shall be elected in the manner, for the time, and subject to the regulations hereinafter mentioned." Let me ask, could the words, "for the teaching of Anatomy," except to a non-professional mind, be anything else but nonsense, unless with it were included Practical Dissection? My learned friend is obliged to say that this would mean the teaching of Anatomy by models. Has there been any other kind of teaching than that in the Anatomical School? Where is there any evidence of a Lecturer except in the Anatomical School? They have endeavoured to contend that there was a complete School of Physic where Anatomy was taught without Anatomical subjects. Then it is enacted, "that the several Lecturers in the said several branches are hereby constituted and appointed Professors in the said several branches respectively." This means that of anything in which a person had previously been a Lecturer he became Professor. By this I have shown that, in 1716, the Lecturer was made a Professor in the Anatomical School; and how could any one spell out of this that the Professor is not a Professor of the Anatomical School? Between 1716 and 1785, a material change took place. The office of University Anatomist had ceased to exist. In 1761 George Cleghorn was University Anatomist. Upon the 29th of June, 1761, a Resolution was passed, by which the two offices of Professor and Anatomist were fused into one; and, if this does not conclude the matter, I do not know what could do so. From the month of June, 1761, till 1861, there was no University Anatomist here. The Professor of Anatomy had the entire control of the School. Will you allow me to refer to the regulation under which Dr. M'Dowel holds his present office; and so far from there being any foundation for the assertion that he does not lecture in the Anatomical School, it is provided by the Calendar (Calendar of 1873), that he shall lecture there and nowhere else. He is to be for two hours every day in the Anatomical School, and, during one of these hours, must deliver his Lecture.

*Mr. Tandy.*—It is not done in the Dissecting-room.

*Mr. Fitzgibbon.*—The Dissecting-room is a long room, with the Lecture-room at one end; the Anatomical School is thus defined, and the Lecture of the Professor of Anatomy is to be delivered in that room, during one of the two hours of his attendance. There is another regulation of equal value—that the University Anatomist shall confine himself to De-

monstrations, and shall not deliver Prelections. The duties of Anatomist and Professor are both defined, to be performed in the Anatomical School, and during certain hours of the day. I have already told you that, from the year 1761 to 1861, there was no University Anatomist at all, no person bearing that title. The state of facts during that period is set forth in the 6th paragraph of Dr. M'Dowel's Petition: "Until about the year 1865, the fees for Dissections were collected by the Senior Demonstrator for the Professor, who appointed and paid the salaries of all the Demonstrators, paid the expenses of providing subjects, and the other expenses of the School, and retained the balance for his own use, not accounting with any person. The Senior Demonstrator, by agreement with the Professor, received as his remuneration one-half of the surplus of the fees." Therefore, during the entire of these 100 years, the Professor received the fees for the performance of these duties, under the Statute—received them, not accounting to any one, and treated them as fees which he was entitled to charge.

Dr. Battersby.—But he paid out of the fees the expenses of the establishment.

*Mr. Fitzgibbon.*—A man can walk into a room and deliver a Lecture without expense, but he cannot go into an Anatomical School, and demonstrate there, without expense. The Board were not bound to provide subjects. They were not under any legal responsibility to do so; and if a man were to teach Anatomy, he could do it only by providing his own subjects. The Board were not under any obligation to provide them; it therefore became necessary for the Professor himself to provide them. His position was recognised by the Statute, the 75th ch. of the 2nd and 3rd Wm. IV. The Anatomy Act recognises no person as entitled to procure a subject, nor have one in his possession, except the Professor or teacher of Anatomy.

Vice-Chancellor.—During my time, while I was a student in the College, several disturbances arose in consequence of the exhumation of bodies for dissection.

*Mr. Fitzgibbon.*—Look to the account paid by the Bursar for subjects. They might as well tell me that Dr. Smith was not entitled to a salary because he paid for subjects, as make out that the Professor was not entitled to his fees, when I find that the Provost and Fellows have not any legal right to charge the fees, while the Professor has that power. It is incumbent on the Professor, if he desire that his School shall pay, to provide the subjects himself. It would be a stronger argument against me, if it turned out that the Board provided the subjects; all

they did was—they took care that the amount for fees was not made too great; and that the remuneration should be reasonable. I have endeavoured to show that the Lectures included Demonstrations.

VICE-CHANCELLOR.—Could the words of the Statute be said to include all?

*Mr. Fitzgibbon.*—In the early Statutes I have shown that the Lectures did include practical Demonstrations.

VICE-CHANCELLOR.—You must take the whole code.

*Mr. Fitzgibbon.*—And the key of it is, that a complete School of Physic includes Demonstrations. Take the two sister Professorships. Is the Lecturer in Chemistry to have a different law applied to him in the Laboratory, to that applied when he is in the Lecture-room? Is the Professor of Botany to be prevented from going into the Botanical Gardens and demonstrating? I find in the Calendar, in the case of the Professor of Chemistry, there is a fee charged, ten shillings, for anticipated breakage, to be made good by the student. By what possibility can this be legalised in any other way than by showing that all these are fees charged for Lectures, and that the Professor has the power to make these charges? This, in 1761, is recognised; and if ever a document carried demonstration with it, this does, that the Board were dealing with money over which they had not any power, except to regulate its amount. If you refer to the 4th page of the Answer of the Board to the Appeal, you will find in the 2nd paragraph that "in the event of the offices (University Lecturer in Practical Anatomy, and Assistant Lecturer) becoming vacant, before the period alluded to, the Professor shall recommend to the Board a fit and proper person or persons to succeed to the vacant offices;" that is to say, the two gentlemen who were appointed were Mr. Barton and Mr. Bennett, and it is provided that, if other officers are to be appointed successors to those gentlemen, the appointment shall be made as the Professor recommends; and in paragraph 3, it is provided, that "the pecuniary arrangements in force between the Professor, Mr. Barton, and Mr. Bennett, shall continue, during the residue of Dr. M'Dowel's term of office, no change to be made without the consent of the parties, and the approbation of the Board." Here is a declaration by the Board, in their own Resolution, that the pecuniary arrangements already in force shall continue; and in paragraph 4, it is resolved, that "at the termination of Dr. M'Dowel's term of office, in 1865, the Board shall be at liberty to make new regulations for the Professorship, and to re-appoint, or not, any or all of the gentlemen holding the offices." It is

impossible to put any other construction upon this Resolution than this: the officers should be appointed on the recommendation of the Professor; all the arrangements rested with him, and on him was imposed, and to him was given the entire responsibility and control of the Dissecting-room. Observe, that these regulations were to continue only to the termination of Dr. M'Dowel's term of office, in 1865. We would naturally expect to find something bearing upon the subject when the Professorship expired; so, at page 5, we find "The Petitioner's term of office, as Professor of Anatomy and Chirurgery, expired on the 9th day of October, 1865, and he was then continued in office for a further term of seven years. The following is the entry on the Registrar's Book, of such re-election or continuance in office: "Benjamin M'Dowel, Esq., M. D., was re-elected Professor of Anatomy, the Board reserving the usual powers of directing the arrangements of the School; and Dr. Edward Bennett, to the office of University Anatomist." I am told that the School does not form any part of the Professor's duty, but is something distinct and separate; and yet we have again a declaration, treating the School as part of his Professorship, holding the Professor responsible for its control, and establishing that the monetary arrangements were to continue as they had been previously. In 1865 the Resolution was passed which we have in the Calendar; up to that time the fees were received from the students by Dr. Bennett.

VICE-CHANCELLOR.—Are the fees for Lectures received directly by the Professor?

*Mr. Fitzgibbon.*—Yes, and so were the other fees till the year 1865. The fees were previously accounted for with the Professor, but in 1865 the following Resolution (in page 5 of Dr. M'Dowel's Petition) was adopted—"Resolved, that Dr. Bennett (the University Anatomist) be authorized to receive the fees for dissections, and lodge them in bank to the credit of the Bursar, who will undertake the distribution of the same." It is perfectly clear from this Resolution that if the Bursar did not properly distribute the fees, he would be liable to an action for "money had and received." His duty was to distribute the fees; he has always done so, and all the expenses having been deducted, the balance is divided between the Professor and the University Anatomist, in compliance with an arrangement that had existed previously.

VICE-CHANCELLOR.—The money is to go to the credit of the Institution.

*Mr. Fitzgibbon.*—I find what was done was this: although the money was lodged to the credit of the Bursar, nothing went into

the pockets of any one except those who had previously received it. I have shown that it is left to the credit of the Dissecting School; I demonstrate that the Professor is the person who is responsible for the efficiency of the School, and the discharge of the duties connected with it; and so long as the duty is thrown upon the Professor, the Board have not any right to apply the fees to any other purpose than that for which they were intended.

Vice-Chancellor.—Suppose the Board considered that the School of Physic was incomplete, and that it would be well that scientific instruction should be also provided, but that sufficient provision had not been made for the maintenance of such instruction, would it not be incidental to have and exercise the power of appropriating some of the proceeds to the sustainment of this instruction?

*Mr. Fitzgibbon.*—It is my desire to show the Visitors how all objections that may be raised can be answered, and I am glad when any objection is taken, in order that I may meet it. The School of Physic, established by Statute, was declared to be a *complete* school; so long as the Professors appointed under the Statute succeed in discharging all the duties imposed upon them, so long are they entitled to receive the entire of the emoluments. Only one of two things could occur—either something is not done which the Professor should do, or something additional, which the Board consider advantageous, is required by them to be done. If the Professor does not perform all the duties entrusted to him, he can be compelled to do so, and money will be deducted from him if he does not do his duty; but if any additional work is demanded, other means of carrying it out must be afforded.

Vice-Chancellor.—Your argument is, that if anything supplemental is required, it must be paid for.

*Mr. Fitzgibbon.*—My contention is, that whatever is defective in a statutable point of view must be made good, and what is supplemental cannot be taken from the person who has been elected under the Statute for the discharge of other duties. So far I have been arguing upon affirmative grounds. I shall now supply a few arguments, negative in their character. Where is the authority in the Board to charge these fees? You must show the lawful origin of all fees.

Vice-Chancellor.—A claim for compensation may be made in the nature of a *quantum meruit*, though not in the nature of fees; and if there is a dispute in reference to it, the verdict of a jury may establish the demand.

*Mr. Fitzgibbon.*—But you must see by whom the benefit has been conferred. Every argument in the case demonstrates that the Professor was to receive the money; and there is not even a shadow of foundation for the allegation that, at the beginning of the foundation of the School of Physic, any person but the Professors got the fees; but even were there any reason for the contrary, the 25th of Geo. III. put an end to it.

Dr. Battersby.—He is the officer of the College.

*Mr. Fitzgibbon.*—He is responsible to the College, and there is not any instance in which the College could deduct a fee to which one of its officers was entitled. The University Anatomist never received any salary except that which he got from the Professor—even after his appointment in 1861, he did not get it. He received no fees till the Act of 1867. I rely upon the Act as showing that the Board have not any power to deal with fees created by Statute.

Vice-Chancellor.—The power which they had under the Act of Geo. III. was to regulate the amount of fees.

*Mr. Fitzgibbon* (refers to the 30th Vic., ch. 9).—It is shown that, without a Statute, the Board could not divert the fees from the Professor to any other person. A legislative provision, in the event of neglect, has been made by the 4th section. If my argument is right, that these fees are provided for by the 40th Geo. III., I can likewise rely upon the late Statute as proving that without a statutable enactment the fees could not be diverted. In the case of other officers, it is manifest there is not any power in the Board to change the fees from one officer and give them to another ; and there is no instance in which there was a transfer of fees belonging to one officer to another, without his sanction, or a statutable enactment. It is remarkable—and it supports my argument—that the fees attached to the office of Vice-Chancellor were described under the Letters Patent of Victoria (1868), as payable by *user* only. We have the *user* of 100 years for paying these fees directly to the Professor; he put the fees in his pocket, and did not account with anybody. Therefore we have not any evidence that the fees ever were payable to the College, but we have proof that they were within the School of Physic, and were fees remunerating the Professor for the discharge of duties which he was bound to perform.

Vice-Chancellor.—Fees that the Professor could claim; but the question is, whether the construction to be put upon it is not, that, for the sake of convenience, he was left to collect the fees.

*Mr. Fitzgibbon.*—But recollect that in every case of an emi-

nent man who made a character in the Profession for an Anatomical School—take for instance the Carmichael School and the Ledwich School—it was private property; the Board gave the building, they appointed the Professor, and left him to work the School; he, to be sure, was restrained from charging too much.

Dr. Battersby.—I do not understand that they gave the Professor any house; it was not his private house. The Board merely employed him.

*Mr. Fitzgibbon.*—There is another party to the transfer of the fees. The students pay the money for demonstrations upon the faith that they are to be instructed in Practical Anatomy, and is it not illegal to take the fund given for one purpose and apply it to another? Surely it would be the duty of the Board to charge a separate fee for Comparative Anatomy. Let me refer you to what they did. They imposed upon the Professor of Comparative Anatomy the duty of delivering a series of Lectures, which are considered to be some of the Lectures for which the Professorial Lecture fees are payable. I find that the Professor of Comparative Anatomy has cast upon him the duty of delivering eighteen of the Lectures heretofore delivered by the Professor of Anatomy.

Vice-Chancellor.—Do you mean to say that the Board were a party to this?

*Mr. Fitzgibbon.*—If you admit that the Board could take away an office given by Statute, if you admit that this is a lawful proceeding, it would be equally so to appoint another Professor who was not connected with the School of Physic, to deliver all the Lectures.

Vice-Chancellor.—If the Statute made it the Professor's duty to deliver the Lectures; you go upon the supposition that they are comprehended under the 40th of Geo. III.

*Mr. Fitzgibbon.*—It is conceded that the eighteen Lectures were given by the Professor in consideration of the fee received by him under the Statute. The 31st section of the 40th of Geo. III. is to this effect: "Be it enacted that the Lectures shall commence on the first Monday in November, and continue until the end of April."

Vice-Chancellor.—That has been repealed.

*Mr. Fitzgibbon.*—Yes, but only for another purpose. It is not necessary for me to say more on this part of the case, than that if you might withdraw from the Professor the delivery of eighteen Lectures, it is equally clear that you could remove all. I shall now apply myself to show that these eighteen Lectures are within the scope of the Act of the 40th of Geo. III.,

and that handing them over to another Professor is contrary to the Statute. The terms of the Resolution of the Board (page 119 of the Calendar) are, that a Professorship of Anatomy shall be appointed, and the Professor shall deliver a course of Lectures, and attend daily in the Dissecting-room. Then in the Decree of the Board and Visitors, the duties of the Professor of Comparative Anatomy shall be determined from time to time by the Provost and Senior Fellows. It is clear that the Professor of Comparative Anatomy, established under these rules, has been entirely withdrawn from the control of the King and Queen's College of Physicians; it is also clear that under the Act, the 40th of Geo. III., the King and Queen's College of Physicians were given a remedy whenever they were dissatisfied with the University Professors. I intend to apply the argument to another branch of the case; it goes to show that all the duties prescribed by the Statute were intended to be paid for out of the statutory funds, and that they should remain under the control of the King and Queen's College of Physicians. I have nothing more to do now than to correct a mistake into which Dr. Ball happened to fall. It is an error to say that the three guineas to which he referred is the same fee that is mentioned in the 40th of Geo. III. The only fee of three guineas mentioned in that Statute is a fee for Clinical Lectures. It happens by a coincidence that there is a second fee of three guineas for Professorial Lectures, but this is merely a coincidence: the amount only is the same.

Dr. Battersby.—From what source does the second fee come?

*Mr. Fitzgibbon.*—It is for a series of Lectures delivered in Trinity College.

*Mr. Tandy.*—Under the 40th of Geo. III.

*Mr. Fitzgibbon.*—I maintain it to be beyond the possibility of a doubt that by the earlier deed and Statutes it was intended that a complete School of Physic should include Practical Anatomy; that the teaching of Anatomy, under the Act of Geo. III., meant Practical Anatomy; and by referring to the different dates, it appears that there was a Professor of Practical Anatomy: that in the earlier Statute, namely, the Statute of Geo. II., Practical Anatomy is included within the meaning of Lectures, in express terms; and I am at a loss to understand any difference between "Anatomy," and Lectures upon a dead subject. Both are Lectures; and the original title of the officer was "Lecturer," and he is converted into a Professor, under a different title, with the same duties.

VICE-CHANCELLOR.—Is there any rule to make an Anatomical Lecturer give Lectures in Comparative Anatomy ?

*Mr. Fitzgibbon.*—It would appear that there is such a rule.

VICE-CHANCELLOR.—Is there any written rule?

*Mr. Fitzgibbon.*—I contend that the Board have a perfect right and power to regulate the Professorship.

VICE-CHANCELLOR.—It would be requisite to submit any change to the College of Physicians.

*Mr. Fitzgibbon.*—I think they have the power of objecting.

VICE-CHANCELLOR.—Would not the change of delivering the eighteen Lectures be a proper change?

*Mr. Fitzgibbon.*—It is manifest that it is not. It is conceded that the eighteen Lectures were delivered between the months of November and April; the Professor was bound to lecture during these periods.

VICE-CHANCELLOR.—Is there any written rule?

*Mr. Fitzgibbon.*—You will find in the Calendar——

*Mr. Tandy.*—Allow me to say, I fell into an error in stating that the Lectures upon Comparative Anatomy were introduced by Dr. Maccartney; they were commenced by Dr. Harrisson.

VICE-CHANCELLOR.— Was there any rule?

*Mr. Fitzgibbon.*—They merely devoted eighteen of the Lectures to this particular branch of the subject.

VICE-CHANCELLOR.—They did not come under the joint supervision of the two Colleges?

*Mr. Fitzgibbon.*—They did. What I contend is, that it cannot be legal to impose duties which are given by the Statute to one Professor, upon another Professor, and whether he chose to devote the eighteen Lectures to Comparative Anatomy or not, they were equally Lectures delivered by the Professor in his capacity of Professor of Anatomy; and if once you break in upon the principle that the Professor of Anatomy is the person by whom the Lectures are to be delivered, you may place the whole matter in the hands of the officers of the College, instead of in the hands of Trinity College and the College of Physicians.

VICE-CHANCELLOR.—Could not there be something supplemental between them and the Board?

*Mr. Fitzgibbon.*—There is a power in the Act to give reasonable vacation to the Lecturers; the two Bodies have the power to require that the Lectures shall be delivered at definite periods.

*Mr. Tandy.*—I understood that the Lectures in Comparative Anatomy were Lectures additional to the Professorial Lectures, established under the Resolution of the Board. "A course of eighteen Lectures shall be given in Comparative Anatomy, in

Trinity Term, by the Professor of Anatomy" (page 120, Calendar, 1873). These were in addition to the regular course of Professorial Lectures, and these Lectures did not commence till Trinity Term.

*Mr. Fitzgibbon.*—The Resolution of August, 1867, is thus headed: "Regulations of the School of Physic in Ireland, ordered by the Board of Trinity College, Dublin, and by the King and Queen's College of Physicians in Ireland, in accordance with the School of Physic (Ireland) Amendment Act, 1867, 30th Vict., ch. 9, sect. 6." It would be better to read what has been done, before it is asserted that they are not within the Statute. The words are (Regulation 5): "The Lectures of the University Anatomist shall be strictly Demonstrations, and not a systematic course of Prelections." So that here is a declaration that the Demonstrations in the School are Lectures. I have shown that Comparative Anatomy was not altogether outside the duties of the Professor of Anatomy. We know that the term "Comparative Anatomy," combined the two species of Anatomical investigation, human subjects and the bodies of other animals. The duties are in terms described in the will of Sir Patrick Dun, therefore, Comparative Anatomy is within the scope of the Professor's duties, and should, as such, be continued.

The next argument was, that Dr. M'Dowel was bound to give up his engagement in the Whitworth Hospital. Now, I ask, is the Resolution a lawful one; is it a lawful regulation of the conduct of the Professor? Within the meaning of the 40th of George III., this is not the regulation of the Professor's conduct at all. The only way in which Dr. Ball was able to sustain his contention was this, that the words were wide enough to enable the Board to make regulations to govern the entire life of the Professor. They could make regulations at all times, in all places, and in all capacities in relation to him. With every respect for Dr. Ball, his argument goes too far, because it comes to this—there could not by possibility be an illegal regulation under the Statute; if you are to carry out indirectly that which you could not do directly, it would come to this—you might make arrangements for every hour of his time, and thus compel him to act in every capacity, in any manner you considered proper. This is not the meaning of the rule. The duties of the College are to elect the best qualified person to act as Professor, and then to see that he performs all the duties. The oath which he takes is this: "I do swear that I will diligently, and to the best of my skill and judgment, perform the several duties of the Professorship." I admit that the Board may make any regulations they

please to enforce that oath, but they must be regulations that affect the duties of his office.

VICE-CHANCELLOR.—Supposing that the Legislature intended to give the power to the two Bodies to make the regulations that, in their judgment, were sufficient to secure the due discharge of the duties, and supposing that they considered the regulations would be conducive to the interests of the Institution, and secure the efficient performance of the duties, the question is, whether that is not within the meaning of the section?

*Mr. Fitzgibbon.*—The answer to that is—the field of power given to the Board of Trinity College is identical with that exercised by the College of Physicians. There is not any power possessed by one Body which is not enjoyed by the other.

VICE-CHANCELLOR.—And there is a mutual appeal.

*Mr. Fitzgibbon.*—It is not from one of the Bodies to the other.

VICE-CHANCELLOR.—No; to the Visitors.

*Mr. Fitzgibbon.*—It is an appeal from one Body, not to the other Body, but to the Visitors of the Board, which makes the regulations; but there is not any such thing as a power given to both the Bodies to meet and make regulations. The conduct of the Professor is the field of regulation for the Board; and the phrase does not occur once merely, but twice, in the Act. The Professor having sworn that he will perform the several duties of the Professorship, there is a power given to the College of Physicians to appeal to the Visitors in the event of their disapproving of any rule made by the Board of Trinity College. Could language be stronger than this, to show that the subject-matter of complaint is something that relates to the joint interest of both in the conduct of the Professor? and the appeal is given to them, if they are dissatisfied with the conduct of the Professor.

VICE-CHANCELLOR.—Suppose the Professor had been guilty of some immoral conduct in the Hospital, would not that be a cause of complaint?

*Mr. Fitzgibbon.*—Yes.

VICE-CHANCELLOR.—In one view it might have a wide sense, and a more limited sense in another.

*Mr. Fitzgibbon.*—I do not put any limit to their power so long as the conduct of the Professor is involved in the matter; but there is a broad distinction between the conduct of the Professor and the individual. They have no more right to interfere with the individual than there would be a right to interfere with a barrister when he has done the business of his client.

VICE-CHANCELLOR.—Might not misconduct, consisting of some individual immorality, be such a matter as would properly bring him under their cognizance and jurisdiction?

*Mr. Fitzgibbon.*—The matter complained of must be something connected with the office of the Professor. It occurs in the 30th and 39th sections. The power is given to the Board to interfere if they are dissatisfied with the conduct of the Professor, and to the Visitors to inquire into the duties of the Professorship and the concerns of the College.

VICE-CHANCELLOR.—It would not follow that because there was a wider sense in one case, there should be an equally wide sense in another.

*Mr. Fitzgibbon.*—Under the 39th section of the Act, every Professor has a right to appeal, in the event of his having been wronged by the governing body. The King's Professors were in a different position. The Visitors of their College had no visitatorial power except that which was created by the Statute.

VICE-CHANCELLOR.—There was a Charter that gave a power, but as the foundation was not eleemosynary, the Visitors had not a visitatorial power at common law.

*Mr. Fitzgibbon.*—A power, but a very defined one.

VICE-CHANCELLOR.—The College of Physicians in England was constituted by Charter. Blackstone states that the foundation was that of a Civil Corporation, but not eleemosynary, and on an appeal to the Visitors in 1753, it was for several days argued before them (the Lord Chancellor, two Chief Justices, and the Chief Baron), whether, as Visitors, they had any special jurisdiction; and it was decided that they had not, and the appellant was remitted to the Court of King's Bench, as the proper tribunal. In the School of Physic Act, the Visitors of the King's and Queen's College of Physicians are made Visitors by Statute; under it they derive statutory powers; the University is not eleemosynary; it is merely in connexion with the College funds that the general visitatorial jurisdiction arises.

*Mr. Fitzgibbon.*—The matter was discussed upon the occasion of the recent Visitation of the King and Queen's College of Physicians, upon the subject of a By-law—the balloting in the case of Fellowships. The University Professors had been appointed Lecturers by the University authorities; before the passing of the Act, they had all the rights which the Statute gave, to appeal to the Visitors; the King's Professors had no corresponding power; they were appointed upon the foundation of Sir Patrick Dun, and without a statutable power it would remain in the Crown or would not exist at all. The visitatorial powers

have been conferred by the 39th section, and you will find that the powers given have reference to the internal conduct, management, regulation, and government of the College. What I desire to show is, that the subject-matter of the regulations consists of the internal conduct of the Institution; and it could not be contended that this would not come within the visitatorial power, inasmuch as the appeal has been given to Trinity College; yet in the 39th section the power is given "to hear, examine, and finally determine any matter or cause relating to the internal conduct, management, regulation, and due government of the College." Is it not plain, then, that the subject-matter of the regulations is the duty of the Professor? otherwise, if they chose to make a regulation having nothing whatever to do with the Professorship, the absurd result would follow, that they would not have any power over that which the College of Physicians could do. The field of observation and government is the internal management of the place, and the duties of the Professor; and I do not require anything else to show that "the conduct" meant is the conduct of the Professor in the discharge of his official duties. There was another ground fairly put in Dr. M'Dowel's Petition; even though this regulation might not reach his conduct as such, it might mean that unless it were obeyed the duties could not be performed. The ground has been abandoned, because if it were established it must necessarily carry with it the consequence, that, while re-electing Dr. M'Dowel for fourteen years, the Board were permitting him to do a thing which was incompatible with his duties, and the regulation must stand or fall as a regulation controlling the conduct of the Professor. The 39th section of the Act demonstrates my proposition. When I have been given a power to regulate the Professorship, I have not been given a power to regulate the conduct of an individual in any matter in which he is not acting as Professor. If you speak of the conduct of a person, you mean his daily life. By the conduct of a Judge, a General, or a Bishop, you mean the conduct of any one of these in the management of his office and his official duties. Dr. Ball has been forced to push his argument to the full extent of saying that they had the power of defining the duties of the Professor from the time he rose in the morning and throughout the day; but this is not only not a lawful regulation, but it is inconsistent with the terms of the Act of Parliament itself. I shall not weary you by repeating what Mr. Butt has said so much better than I could; but I shall refer to the express declaration of the Statute as to the offices which the Professor shall not hold, as it affords the best argument that he can hold any which are

not inconsistent with the Statute. By the 15th of George II. it is enacted, " That if any person, enjoying a Professorship under the Act, should be elected into any other of the said Professorships in manner aforesaid, then, upon such election, the Professorship by him first enjoyed shall become *ipso facto* vacant, and the Examiner shall proceed to fill it up with some other able person in manner aforesaid; and also, that if any person enjoying a Professorship under this Act shall be made Lecturer or Professor of Anatomy, or Lecturer or Professor of Chemistry, or Lecturer or Professor of Botany in Trinity College, near Dublin; then, upon his acceptance of such Lectureship or Professorship, the Professorship by him first enjoyed under this present Act shall be *ipso facto* vacant; and likewise, if the Lecturer or Professor of Chemistry, or the Lecturer or Professor of Botany in the said Trinity College, shall at any time be elected into the Professorships created by this Act in manner aforesaid, such election shall be of none effect, but shall be absolutely void, unless the person so elected shall, within one calendar month after such election, surrender or give up his said place or office of Lecturer or Professor of Anatomy, Chemistry, or Botany, in the said College of Dublin: it being the intent of this Act that two of the said offices shall not be filled by the same person at the same time."

Vice-Chancellor.—The policy of the Act was against the holding of two or more offices by the same person.

*Mr. Fitzgibbon.*—Let me now refer you to the 42nd section of the 40th of Geo. III.: "And be it also enacted, that none of the said Professors, whether King's or University Professors, shall be qualified to hold the King's Professorship of Physic in the University of Dublin, and that no person shall be capable of being elected a fellow of said College of Physicians, who shall not have taken the Degree of Bachelor or Master in Arts, or Doctor in Physic, in one of the Universities of Dublin, Oxford, or Cambridge, unless the number of Fellows shall at any time be reduced to six, in which case only, whenever it may happen, such qualification of the Degree of Bachelor or Master in Arts, or Doctor of Physic, may be dispensed with respectively." I rely upon this section: it makes this a matter of qualification, and there is not any power to deprive a person of the qualification given by the Act of Parliament.

Vice-Chancellor.—I do not intend to intimate any opinion, but it might be impossible to lay down a rigid rule. There might be circumstances where the tenure of another office would be incompatible with the due discharge of the duties of the Professorship. Might it not, however, be said that the section was

drawn up on the principle that the framers confided in the judgment of the two Bodies to make a proper regulation the subject?

*Mr. Fitzgibbon.*—They have power to rectify what is improper. By the 28th section, it is enacted, that "If any Professor shall wilfully neglect to perform the duty of his Professorship, it shall and may be lawful to and for the Electors of the King's Professors, in case of the said Professors, and to and for the Provost, or, in his absence, the Vice-Provost, and Senior Fellows of Trinity College, Dublin, in case of the University Professors, to admonish the said Professors; and in case of obstinate neglect of duty, after such admonition, to deprive the said Professor of his Professorship." Therefore the thing comes round to the same point, because so long as the Professor can perform the duties of his office, he cannot be charged with wilful neglect. The meaning of the Act was, to make the Professors independent, so long as their duties were performed; and to withhold from the Board, or the College of Physicians, the power of compelling them as mere servants to fetch and carry in all things outside their duty.

Vice-Chancellor.—There is a clause in the Decrees of the Board of the College and Visitors as to College Professors appointed by them, that if the Professor shall engage or continue in an occupation which, in the opinion of the Board, is incompatible with his office, he forfeits the office.

*Mr. Fitzgibbon.*—I shall say nothing about the policy or propriety of that rule; but my position is, that Dr. M'Dowel is as much an officer under the Statute, as any one of the Board of Trinity College. They have power over him, but he has rights, so long as he continues to discharge his duties. The argument urged at the other side is not sustainable at all, unless it is pushed to the extent of enabling the Board to do indirectly what they are not empowered to do directly; they could only make a regulation for him out of office, which, if he were in office, he could not disobey.

Vice-Chancellor.—Dr. Ball put it that they could do it practically; and I asked him, suppose the Board thought it would be more beneficial that he should not continue his private practice, had they the power to enforce this? A power is given to them to make regulations from time to time—it may be unjust, but they have a power to act during the period of the Professorship; it would be a startling thing to say that if a man were elected without any express condition being imposed upon him, a regulation of this description could be enforced, that he should give up his practice, or abstain from marrying. You must draw the line somewhere.

*Mr. Fitzgibbon.*—I did not intend to let Dr. Ball out of this part of the case. He was asked whether a regulation could be made after the Professor was appointed. The greatest injustice might result from such a proceeding. The day after the election the choice might be given to him, to forfeit his practice or retire. So long as the Professor does not commit wilful neglect or misbehave himself, he is safe; they may make any regulation they please, to secure the performance of his duties, but when they do more than that, the regulation is illegal. I pass over the 25th of Geo. III., because it has been repealed; and I proceed to consider the provisions of the 40th of Geo. III. The 24th section of that Act refers to the powers of the Board and the College of Physicians relative to the Professorships, and declares that it shall and may be lawful for them, "if they shall respectively judge fit so to do, to direct that the said Professors, or any of them, shall continue to hold their Professorships for another term of seven years after the expiration of the term for which he, or they, were elected." This is the section of the Statute upon which Dr. M'Dowel proceeded; when he sent in his application for the office he was the Professor; and, according to this section, he might be elected for another period of seven years, at the expiration of the same period. Mr. Tandy attempted to show that there is a distinction between saying that a man shall not hold another office, and his being ineligible because he held it; but this is answered by asking, what is the difference between saying that a man is ineligible if he practises, and not allowing him to practise when elected? Then the 25th section enacts that he is capable of being re-elected.

Vice-Chancellor.—I do not think there is anything in that point.

*Mr. Fitzgibbon.*—I take leave to say I think there is; it shows that the Act is a complete code; it gives rules regulating the Professorship, and declares who is to be eligible.

Vice-Chancellor.—They have the power to impose a new regulation.

*Mr. Fitzgibbon.*—Dr. Ball pressed upon the Court the argument, that the power of objecting to rules rested solely with the College of Physicians, and that Dr. M'Dowel was not *rectus in Curiâ* in coming here. This argument is disposed of when it is shown that the jurisdiction of the College of Physicians is the same as that of the Board, because there is not any rule that the Board are empowered to make, relative to their Professors, that the Col-

lege of Physicians could not make as to theirs; and if one of these could extend the rules, so could the other Body.

Vice-Chancellor.—The Visitors have the power, and they are to give their opinion. I do not see how they can escape from it.

*Mr. Fitzgibbon.*—The matter must come before this tribunal if the College of Physicians is dissatisfied. If the Professor disobeys their regulation, he is admonished; and whether the complainant is the Professor, or the College of Physicians, the question must come here for consideration. Thus do I get rid of the whole of Dr. Ball's argument, that the King and Queen's College of Physicians are not represented here. Remember what he said, why go to the College of Physicians for trumpery details?

Vice-Chancellor.—It is a system of joint management.

*Mr. Fitzgibbon.*—But it is to settle details that the power has been given to the Visitors. There is no course to be taken nor act performed by one of the Bodies, in relation to the Professorships, that may not be taken by the other; and if the thing done were informal and illegal, it might be brought before the Visitors either by the College of Physicians or by the Professor. It is for you to say, whether the real meaning of the rule is not, that the Board shall see the duty of the Professor has been properly discharged; you are not at liberty to do more than see that his duties in connexion with the School of Physic have been properly attended to. If you depart from that rule, the whole matter is at large, and there is no ground for contending that if the Board have the power of saying that the Professor should not have anything to do with another Hospital, they may not enact that he should not marry, nor attend a particular place of worship. It is clear that when there is an admonition, the complaint must come before the Visitors, and they must consider whether the regulation is or is not within the Act of Parliament.

Vice-Chancellor.—Their case is, that either Body may make a regulation to which the other Body may object; and if it be rightly made, we cannot go further. Some may think that the rule was good; some, on the contrary, may consider that it was unwise, but we have to decide whether the Legislature intended to confer on these Bodies so large a power as that which has been contended for here.

*Mr. Fitzgibbon.*—And that they did not so intend, is shown by the fact that if their powers were so extensive, they might make a regulation that a person should forfeit his office if he appealed to the Visitors.

Vice-Chancellor.—We would know how to deal with such

a proposition. We would make short work of it, so long as we have the law of this imperial realm to guide us.

Dr. Battersby.—The conduct complained of must be something more than a mere neglect of duty.

*Mr. Fitzgibbon.*—Their power is to define the duties of the Professors; if they neglect their duties, they must be admonished. There is an appeal to the Visitors given to the Professor, if he thinks he has been unfairly admonished: and it would be nothing but a mockery to give him such a power of appeal, if there were an over-riding authority to deprive him of all power. But he has an appeal, and this enactment would be inconsistent with the arbitrary power contended for here, which, if exercised, would render it impossible for the Professor to do his duty. Suppose the conditions imposed on him were, that he should attend in the School at six o'clock in the morning, when no students would be in it. His answer would be, that no students attended at so early an hour, and, therefore, he could not perform his duties. The Board might reply that he had been guilty of wilful neglect, and they should admonish him. He has a power of appeal; and could it be contended that it would not be open to him to say to the Board that, in attending the School at 6 in the morning he was not discharging his duty, because there were not any students to whom he could impart instruction? whereas, if the argument at the other side were correct, it would be open to the Board, who were endeavouring to establish an *Imperium in Imperio*, to say that anything constituted a neglect of duty.

Vice-Chancellor.—There must be a limit to the regulation in a case where the Bodies who make it are double.

*Mr. Fitzgibbon.*—And that limit is what is compatible with the due performance of the duties of the Professorship.

Vice-Chancellor.—Is not the decision final? Suppose they make a rule under the Act, according to their judgments, can the judgment of any other tribunal be substituted?

*Mr. Fitzgibbon.*—They can make any regulation, and if they allege the commission of a breach of wilful neglect, he has an appeal. Upon that proceeding the question for the consideration of the Visitors is not whether he has disobeyed the rule, but whether the duty is such as should be imposed upon him, and its performance is such as should be required of him.

Vice-Chancellor.—If our opinion should be that the rule had been made conscientiously by those who, under the Statute, had the power of making it, I do not see that we have any power to alter it.

*Mr. Fitzgibbon.*—The words, "within the scope of their

authority," must enter into the matter, and that scope extends only to the due discharge of duty. The Board can make regulations regulating the duties of the Professor, and this Court has not any power except to see that the duties have been performed.

Vice-Chancellor.—Your argument is that, whether it is or is not reasonable, it can only regulate what may be termed his conduct in the Professorship?

*Mr. Fitzgibbon.*—There is no allegation of misconduct. I maintain that it is impossible to support the rule, unless it be a rule regulating the duties of the Professorship. I call your attention to what the Act requires to be inserted in the advertisement; the Act requires that every person who sends in his name shall state where he has practised, thus clearly showing that the candidate must be a practising Physician. The only remaining portion of the case is this: whether, assuming that we are right, which we respectfully contend we are, that the regulation is illegal and void, there is anything in Dr. M'Dowel's position which ought to prevent him from saying that it is so. Contract has been put out of the case. There can be no contract to abide by an illegal condition. Railway Companies have endeavoured, by posting up conditions, to avoid being bound as carriers; but they may post up what they like; nobody is bound to attend to it. As to contract, the question is, what was the agreement between the parties; and it is clear, when either party does not agree, there is not any contract.

Contract, then, is out of the case, but in treating the question on the ground of fair dealing, the whole case must be taken together. What is the position of Dr. M'Dowel? He has been for fourteen years the head of the School; during that time he has held the office in the Whitworth Hospital, and I contend that if there were nothing else in the case, to apply the Resolution to him, when it had no validity against any one else, would be to strain the law in a manner contrary to equity, instead of what should be, in favour of equity. You will find it stated, in the 19th paragraph of his Petition, that the Petitioner in his candidature never formed, conveyed, or expressed any intention of resigning his office of Physician to the Richmond, Whitworth, and Hardwicke Hospitals; and until after his re-election nothing whatever was conveyed to him, by any of the electors, calculated to remove the impression upon his mind, that if re-elected his existing interests would remain unaffected as before; and the Board in their Answer (page 7, paragraph 23) admit this to be the case.

Vice-Chancellor.—The Board say so in their Answer.

*Mr. Fitzgibbon.*—I shall read the passage. There is a statement by Dr. M'Dowel, that for fourteen years he held the Professorship, with the belief that the existing office which he held was not affected by the regulation, and with that belief came forward as a candidate. In the 23rd paragraph of the Answer, the Board say, "We admit, as stated in paragraph 19 of the said Petition, that the Petitioner never, to our knowledge, information, or belief, conveyed or expressed, during his candidature, any intention of resigning his said office of Physician to the said Hospitals, and we know not, and therefore cannot say, whether he ever formed any such intention."

Vice-Chancellor.—They say that they would not have re-elected him if they did not believe that he would have subscribed the conditions in the notice; and they were of opinion, having published the advertisement, from which all reference to existing interests is left out, that nobody reading that notice would imagine anything else than this—they would not elect anybody unless they believed he would accept the office subject to the conditions. Now, suppose, though he had not any intention of resigning, yet if his acts, taken together, would naturally lead the Board to believe that he was willing to accept the office upon the conditions imposed by them, and they elected him with this belief, and under these circumstances, the question is, not what he in fact intended, but what he said, and induced others to believe that he intended; and suppose there was a rational ground for believing that he was willing to take the office upon the conditions notified, and the Board were resolved not to elect him upon any other terms, is it consistent with legal principles for him to accept the office, but after his election to insist that he had a right to repudiate the conditions? I put the question thus, for the purpose of pressing upon you a point that requires an answer. I do not intend to bind myself at present to a definite opinion upon it.

*Mr. Fitzgibbon.*—I am anxious to have it put in this pointed manner, because it is susceptible of a complete and perfect answer. If a person, standing silently by, from his conduct or otherwise, induces another to change his condition, he is bound to carry it out; but we are here upon the assumption that it is an illegal Resolution, which never should have been put into the advertisement, and which, if the advertisement were republished, would not again appear in it. Dr. M'Dowel is elected for being the best qualified of the candidates, and upon the assumption that the regulation is a good one. It may be that the Board would not have elected him if they knew that he did not intend to obey the regulation; and that, if they did not elect him, they would

have elected somebody else; but they would be driven to a new election if they had elected a different person. It was not a matter of choice with them, whether they would elect at all, but they should decide who was the best qualified in a number of candidates, upon the assumption that the regulation was a good one.

Vice-Chancellor.—Would it not be competent for the Board to exercise their judgment generally in their selection of a candidate? Suppose they considered that another candidate was not so well qualified, as to professional capacity, but that he could devote his whole time to the duties of the office, might they not act upon this, as an element of choice in the exercise of their judgment as to which of the candidates, on the whole, was the most fit to be elected? This argument might be used to turn the scale—an elector might say that he preferred the candidate who, though he did not possess such high attainments as another, yet was better qualified for the office, because he could give undivided attention to the duties; and when the electors, upon the assumption that he coincided in their view, elected him, could he be allowed to say he would accept the office, enjoy the advantages derivable from it, and refuse to be bound by the prescribed conditions? According to my recollection of the authorities on Corporation Laws, a man cannot be allowed to take his chance of inconsistent advantages; to affirm and disaffirm the same transaction.

*Mr. Fitzgibbon.*—We feel strongly that so long as we remain within legal principles, the matter is clear; but the moment we wander outside legal principles, we do not know what we are doing. If they went to the election in the belief that it was a good condition, and it turned out to be a bad condition, no harm would be done in consequence; because if Dr. M'Dowel is the person who ought to be elected, if the condition were a good one, he must equally be elected if the condition were bad. If they, acting upon the assumption that the advertisement was good, elected one who was not the best qualified to fill the office, Dr. M'Dowel would have a right to complain; but they went to the election, and asked Dr. M'Dowel as the best qualified candidate, to be bound by an illegal Resolution. He said, "I will not be bound by the Resolution, because it is illegal."

Vice-Chancellor.—Suppose, before the election came on, the Board gave him to understand that, if they elected him, he should give up the Whitworth Hospital, and he did not object, would he not be bound by the understanding?

*Mr. Fitzgibbon.*—It would come to this, that any stipulation,

no matter how illegal, would be binding on the candidate, and the Visitors would not have any power to control it. There would not be any limit to the jurisdiction; and this shows that the question to be discussed is, whether the rule is one that the law can recognise, or one that ever could be recognised in a Court of Equity? If the rule could be in either way regarded as being a binding rule, Dr. M'Dowel would be bound by it; but if it is not a binding rule, you cannot fix it as binding against him, any more than against any other person.

VICE-CHANCELLOR.—He may show that an element has been introduced which renders the election void; and then he should repudiate it altogether. Neither party says that it was void.

*Mr. Fitzgibbon.*—The result of this would be that, contrary to every principle of law, the publication of an illegal notice might prevent a legal election. I admit that if all the legal conditions have not been fulfilled, the election is bad; but in this case everything that is required by Statute has been observed; but in addition to that, a condition has been imposed which we must assume was contrary to law.

VICE-CHANCELLOR.—Suppose there was a doubt upon the matter in point of law, would it be fair and proper, would it be consistent with principles that, if he induced the Board to elect him, leaving them to believe that if he were elected he would obey the condition imposed, he should afterwards turn round and say he would not be bound by it?

*Mr. Fitzgibbon.*—I am unable to grasp the argument, because you are not dealing with it according to any known principle of equity or law. The Board have the power to enforce the regulation if it be legal; but how is the election made void by their not possessing a power which they thought they had, but which they had not? If they have been misled as to the law, is my client to be prejudiced? What you must see is, how the parties would have stood if they had acted according to law. There is no consideration that could be suggested, assuming this to be a good Resolution, that would not be in the teeth of the law.

VICE-CHANCELLOR.—Each elector had a right to give practical effect to his own opinion, if he thought he could do it with a clear conscience, in the selection of the person whom he believed to be on the whole the best qualified for the office.

*Mr. Fitzgibbon.*—Yes, but it should be his own opinion upon a legitimate ground. The assumption here is, that the ground does not exist in point of law.

VICE-CHANCELLOR.—There might be differences of opinion

between the members of the Board in reference to the Professor. Some might prefer him because he had more experience than others; some might think that he should resign the office, because it would interfere with his giving undivided attention, so as to secure the more efficient performance of Professorial duty.

*Mr. Fitzgibbon.*—I admit that if the attendance of Dr. M'Dowel at the Whitworth Hospital interferes with the due discharge of his duties, he is out of Court. We rely upon the admission that it does not so interfere. The only consideration that could be suggested as affecting the matter in dispute is, whether his holding an office in the Whitworth Hospital rendered him less fitted to discharge the duties of the Professorship. It has been assumed throughout the argument that this is not the case, and we admit that Dr. M'Dowel is bound to perform the duties of his office to the uttermost; but we contend that the duties incidental to his attendance at the Hospital are apart from, independent of, and do not interfere with, his duties as Professor.

Vice-Chancellor.—If the electors thought so, they were bound to vote for him.

*Mr. Fitzgibbon.*—So they did.

*Mr. Butt.*—If this is an element in the decision of the Visitors it must be proved. I am sure there is not an elector who would not say that, had he known it to be an illegal stipulation, he would not enforce it. I am proceeding upon the supposition that the Visitors decided that this was an illegal stipulation. If this does not enter into the word "elected," the elector is bound to elect the best qualified person.

Vice-Chancellor.—Suppose we put the statutory rule out of the case; suppose the election takes place, and there is not any statutory rule at all in the way, and the electors know that if they elected Dr. M'Dowel he would not give up the office in the Hospital, would they not have a right to select the person whom they regarded as under all the circumstances the fittest for the place?

*Mr. Butt.*—The state of facts is this:—they made a rule which they considered was a proper rule. It is one thing for an elector to say, "I would not elect a man if I thought he would dispute a legal rule;" and another thing to say, "We attempted to make a rule which I now understand is not binding, but nevertheless I shall enforce it by my vote."

Vice-Chancellor.—Supposing there were not any law, but the words of the declaration of an elector were left in—"I shall, to the best of my judgment and opinion, without partiality or

prejudice, vote for such a candidate as shall appear to me to be best qualified for the office." Supposing there were not any positive rule, but that the electors were left to themselves freely to act, might not any elector say, that if he had known that Dr. M'Dowel would not have resigned the Hospital, he would not have voted for him ?

*Mr. Fitzgibbon.*—There is a confusion in terms. The elector is bound to say, "I believed this to be lawful regulation, and if I thought Dr. M'Dowel would not obey it, I would not have elected him; but now finding that it is unlawful, and that I have not any right to impose this condition, I shall not enforce it."

Vice-Chancellor.—You may practically give effect to an opinion which you could not enforce as a law. I remember a case in which Chief Justice Cockburn said, in reference to a by-law of a Corporation, that such of the electors as thought it was sound in principle might act upon it individually, although it might not be binding as a rule of law. The same principle was affirmed in the case before the Visitors as to the election of the Bursar. Every elector has been left unfettered to make such a selection as he conscientiously approves, as was allowed in the Bursar's case. It is a concrete judgment of each of the electors, who are bound to deal according to the best of their opinion, whether each thinks such or such a candidate is the best qualified. It is one thing to say whether you can make a thing binding in law, and another thing to say whether there does not still remain the power of giving effect to individual opinion. In giving their opinion on the case, they should consider what would be for the interest of the College, and who was the person best qualified for the position to discharge the duties in the most efficient and satisfactory manner. If the case came before us on appeal, and it turned out that the majority of the electors were each influenced by the conscientious opinion that it would be for the interest of the College and the efficiency of the Medical School that a person should be elected who would be unembarrassed by other occupations, could we say that an election made accordingly was unlawful and void? Some of the electors might say, "We did entertain the opinion that one candidate was perhaps better qualified by learning and acquirements than the other, but that other not being under the obligation of discharging other important duties, having an opportunity of giving his time and attention in a more undivided manner to the duties of the Professorship, the electors in their judgment thought they would secure a better qualified officer by electing the candidate whom they had chosen, and for whose appointment, so

far as it was left to their conscientious judgment, they were not responsible to any human tribunal, provided that they acted *bonâ fide* and according to the best of their judgment.

*Mr. Butt.*—Would not that prevent any inquiry as to why the electors had voted? If that allegation is to be relied upon, I must ask that evidence shall be given to sustain the proposition.

Dr. Battersby.—The Board say, "Here is an allegation that may become the foundation of their judgment," and that the candidate is bound to comply with the terms and conditions imposed. "By a Resolution of the Provost and Fellows, no University Professor in the School of Physic can hold an appointment as Medical Officer to any Clinical Hospital, other than that of Sir Patrick Dun." And again: "The said Provost and Senior Fellows believed, when they elected the said Dr. M'Dowel to the said Professorship, on the 26th day of October, 1872, that he would comply with the terms and conditions mentioned in the said advertisement, and they would not have elected him if they knew, or believed, that he would not comply with them."

*Mr. Butt.*—I mean no disrespect to the Board if I say I should like to have that allegation proved; because, if this were proved, I would assume a different position.

Dr. Battersby.—Whatever the Vice-Chancellor may say, he must act upon what appears here.

*Mr. Butt.*—Surely, if this has an influence upon the mind of the Vice-Chancellor, I am entitled to have the allegation proved. I quite agree in the proposition that no power can control the conscience of a man in judging as to who is the best qualified person to fill the office. I cannot divest my mind of the idea, that it is a totally different thing when the College makes a rule which each elector would consider to be binding upon him, from a state of things in which the electors were released from the rule, and they came to the conclusion that they could not in conscience elect a certain candidate. The broad distinction has been taken; they might think it better, for instance, to elect in rotation. I am sure the intention of every elector will turn out to be, that, having supposed the Board to have made a legal rule, they had power to enforce it, and they should not elect a man who would fail in the discharge of his official duties, in the face of that rule. It is a matter of conscience not cognizable here. This is an inquiry into the conscience of the party. If we are to investigate the motive which has influenced every individual elector, let the motive be ascertained by proof, and let

each be asked whether he will bear out the view taken of his motive and opinion. I ask, would it not be a better and more convenient inquiry to allow the matter to rest upon the legality or illegality of the rule? If you decide that the rule is legal, Dr. M'Dowel abandons his position; if you say that he is bound by the rule in this way, that as Visitors you can enforce the rule, he will not say anything: but the course proposed will involve a metaphysical inquiry, and, if it be pursued, it is right that we should know, from each individual elector, what was his motive, what was his opinion. If this be done, we should have proof.

Dr. Battersby.—Suppose you were to examine the electors, what question would you put to each of them?

*Mr. Butt.*—I deny that the allegation is true. I would ascertain, if I could, what the Provost felt and said. I would ask him, "Suppose that the matter in discussion were put to the vote, and you knew that you should not have made the rule, would you now act upon that rule?" I ask you, as Visitors, to reject the statement as incapable of proof, or, if capable of proof, to allow it to be proved.

*Dr. Ball.*—The proposition to examine the members of the College is entirely illegal. Every man who gives a vote is responsible for his act, but he is not responsible for his motive. This matter raises a question of a different character, not what the motive of the elector was, but whether the rule made by the Board is or is not illegal. The electors have, or have not, hanging over their heads an illegal rule—the question is, whether that rule is good or bad. Just as the College of Physicians considered and decided that an election by ballot was bad. The question is, if this rule be illegal, pervading the entire proceeding and operating upon the minds of the electors, it does not invalidate the whole matter.

*Mr. Butt.*—I would be satisfied with the way in which the question was opened by Dr. Ball, but Mr. Tandy pressed the point further, and I thought the Vice-Chancellor would have taken that as conceded. Surely the proper way for testing motive is to withdraw this from the answer: "The said Provost and Senior Fellows, when they elected the Petitioner to the said Professorship, believed that he would comply with and acquiesce in the terms and conditions set forth in the said advertisement and in the said Resolution of the 24th October, 1872, and they would have elected him to the said office if they knew or believed that he would not comply therewith." This is a substantial allegation of a matter of fact. The Vice-Chancellor thinks it may influence his judgment. If you would inquire

into the motives of the election, it is only common justice to Dr. M'Dowel that you should allow it to be proved.

Dr. Battersby.—They do not offer any evidence to us upon the point, and we must take it merely as a statement.

*Mr. Butt.*—If it is not an element of judgment it should be withdrawn.

Dr. Battersby.—It is an argument. The fair way is, if it is not to be acted upon, let it be withdrawn. The matter must be taken as if the Board went to the election with a Resolution appearing in their transactions. Whether they believed one thing or believed another we do not know; but when we shall come to determine the question, we shall have to consider the effect of the condition upon the minds of those who acted, and deal with it accordingly.

*Mr. Fitzgibbon.*—How can it operate upon their minds except on the assumption that it was a legal rule?

Vice-Chancellor.—The inference to be drawn from the correspondence is, that Dr. M'Dowel took the same view of the condition, or at least did not repudiate it.

*Mr. Fitzgibbon.*—The question here is, whether the Resolution can be taken into account as a legal element in the election. It may, if it be a legal condition; but if it is not, the election would proceed as if it had no existence. The only element intervening to affect the election was the belief in the validity of the Resolution.

Vice-Chancellor.—Could a man be allowed to take the chance of inconsistent advantages?

*Mr. Fitzgibbon.*—The parties must be put into the same position as if they acted upon a legal basis. To take into account the holding of Whitworth Hospital, on the assumption that the rule was bad, would be an illegal consideration.

Vice-Chancellor.—Suppose you were to put the rule aside, do you think the election would not be voidable, or that the Board, upon a new election, could not give effect to individual opinions, according to the principle of the rule?

*Mr. Fitzgibbon.*—I can see that it would be most disastrous to Trinity College to go to a new election, acting upon this rule. The result would be, that you would have an election in which the Board would be declared at liberty to give effect, by acting on their individual opinions, to an illegal rule, which would separate Trinity College from every Hospital except that of Sir Patrick Dun, and bring down the Medical School of Trinity College to the level of that Hospital, instead of leaving the School at the head of all such Institutions in Dublin.

Vice-Chancellor.—For that reason I asked the question, whether you would press the line of argument that you had adopted?

*Mr. Fitzgibbon.*—I stated at the commencement that I felt the greatest difficulty in approaching the question. The only principle I am aware of, applicable to such a case as the present, is, that by which parties may be put in the position occupied by them before what led to any misunderstanding had arisen, and the only way in which such a principle could be acted on here would be by directing another election, with a declaration that the electors were not to act upon the Resolution. We maintain that the Resolution as to the fees, and Whitworth Hospital, are not warranted by the Charter; and, in addition to all I have said in reference to the interests of the School of Trinity College, I do not think that, in enforcing this regulation against Dr. M'Dowel, his own position as an individual should be forgotten. It is rather hard, after a period of fourteen years have been passed, in useful and honorable work, to tell him as an individual, that although any one else in the world may repudiate the rule, he is to be treated differently. Suppose there were a regulation in the advertisement, that no person above thirty years of age should be a candidate for the Professorship, and Dr. M'Dowel were above the age, and the Board knew it, could they go back to another election? If the rule were illegal, it should not have been taken into consideration, and if it were legal, the second election should result as the first had done, and in either case Dr. M'Dowel ought to be elected if legal considerations only affected the electors in their choice.

*Mr. Butt.*—As to the way in which I opened the case, I was perfectly willing that, apart from every technical consideration, the Visitors should determine whether the making of the rule was within the power of the Board. I was also willing you should decide whether Dr. M'Dowel is now bound by anything that has taken place, to resign the Professorship? I would say that the question of a void election has not been put forward in the Answer; and if the question were to be raised, it would be only fair to give us an opportunity of meeting it. I scarcely think the Board would like to say that they made the election null and void by merely maintaining a Resolution. I think that the motives of the Board are out of the question, except as showing that they would avoid the election; and I agree with Dr. Ball, that it would be very inconvenient to institute an inquiry into the motives of the voters; but when it was put forward as a ground for affecting a civil right, I thought that the question should be inquired into.

Dr. Battersby.—A man may contract by his acts.

*Mr. Butt.*—This is not anything as to his present condition, but as to a future thing. How can a future thing become an element in such a case, except as a matter of contract? If Dr. M'Dowel led the Board to expect that he would resign, it amounts to a contract.

Vice-Chancellor.—We are both anxious, Dr. Battersby and I (as the parties have waived a great deal of formality, and confided to us a larger discretion than I thought we possessed *de jure*,)* to come to a satisfactory conclusion of the case without undue delay. It has been argued with great ability. I have been greatly struck by the consecutive reasons and lucidity of Mr. Fitzgibbon, and by Mr. Butt's discreet and able argument; but as Dr. Battersby and I have not as yet had an opportunity of conferring together, we shall at once give this important case our deliberate and joint consideration. Nobody could overrate the importance of maintaining the Medical School of Trinity College in its present prosperous condition, and sustaining its high character. We all take pride in the College and the University. We feel how much that is of the highest value exists within these walls, and gives to the Institution a firm hold upon public confidence and respect. Therefore every aspect in which this case should be regarded will induce us to deal with the questions which have been argued before us, under the highest sense of responsibility.

We shall give our judgment with as little delay as possible, for my opinion is, that in such a Court as this we should be more expeditious than in the ordinary Courts of Justice. I feel happy in being able to add, that we are greatly indebted to the Members of the Bar, at both sides, for the very able assistance they have given to us during this inquiry.

*Court adjourned.*

* See *Green* v. *Rutherforth*, 1 Ves. Sen. 472–5; *R.* v. *Trin. Coll.*, 3 L. R. (N. S.), 153; 1 Bl. Com. 471, 481.

# JUDGMENT

## 12TH FEBRUARY, 1873.

THE Visitors resumed the proceedings on this day at 3 o'clock, P. M. The following are the Judgments delivered by them on the occasion :—

THE VICE-CHANCELLOR.—In this case, at the request of the Counsel for the Petitioner, Dr. M'Dowel, and also of the Counsel for the Board of Trinity College, the Visitors undertook to give their opinions on certain questions of law, which have been fully and ably argued before us. They involve the validity of Resolutions and Orders passed by the Board of the College, of which the Petitioner complains, and which he alleges to be unlawful and void. These relate to two distinct matters; and in dealing with them, I will follow the course that has been pursued by Mr. Fitzgibbon in his lucid and very able argument; taking first the Resolutions of the Board, as to the appropriation of the surplus proceeds of the Establishment for demonstrations and dissections in connexion with the Medical School of the College. The Professorship which the Petitioner holds is under what is called the School of Physic Act. It is a septennial office. He was elected to it in 1858, and in 1865 he was continued in it for another septennial period, under the special power given by the Act. The office became vacant on the 14th October, 1872. Dr. M'Dowel was re-elected on the 26th day of that month. During the vacancy, and before the election took place, Resolutions of the Board, of which Dr. M'Dowel complains, were passed on the 24th of October. Under the power conferred by the College Statute of the 18th Vict., the Board appointed a Professor of Comparative Anatomy, who was added to the staff of the Dissecting Establishment, and a share of the surplus remaining after payment of expenses was appropriated to him, and thus the share which Dr. M'Dowel had before received was diminished. In his Petition to the Visitors he submits

that this appropriation was illegal and void, on the following grounds:—

1st. That the said Fees are by law payable to the Professor of Anatomy and Chirurgery, and cannot be appropriated to any other person without his consent.

2nd. That the Provost and Senior Fellows have no power over the said Fees, except to regulate the same.

3rd. That having regard to the terms of the notice of election, the Provost and Senior Fellows had no power to adopt these Resolutions, so as to affect the emoluments of the Professorship during its present period.

The notice to which reference is here made is that directed to be published in the Dublin and the London Gazettes, under the 19th Section of the School of Physic Act, which directs that in the notice, the emoluments and advantages attending the Professorship are to be set forth. In the Gazette notice under which Dr. M'Dowel was re-elected, these are stated to be, first, the annual salary; next, the Fees for attending Clinical Lectures in Sir Patrick Dun's Hospital, which are fixed by the Act; third, Fees for attending the Lectures of the Professor other than Clinical, to be regulated from time to time by the Provost and Senior Fellows. Then follows—"He is also entitled to a portion of the profits arising from the Dissecting School, such proportion being from time to time regulated by the Provost and Senior Fellows." There is a further annual sum mentioned, to which it is not necessary to refer more particularly.

There does not seem to be any material difference between this statement in the notice, and that in the 6th paragraph of Dr. M'Dowel's Petition. The Dissecting School was founded and maintained at the expense of the Board. The regulations of the School were made by the Board. The Professor of Anatomy was placed over the School as the superintendent; and Demonstrators were appointed, the senior of whom was, in 1865, designated as the University Anatomist. The Board also fixed the sum to be paid by the students who attended the demonstrations and dissections, and this formed a fund out of which the current expenses of the department were paid; the surplus was left to be divided between the Professor and the Anatomist. All this was mere matter of convenient arrangement The acquiescence of the Board in the collection, disbursement for expenses, and division of surplus,, was obviously never intended to operate as an abdication of their control and management of the department. They attended to the recom-

mendations of the Professor; but I have not been able to find any satisfactory evidence of a withdrawal of their authority over the department, so as to leave or imply a legal title in the Professor to claim any definite share of the surplus beyond what for the time was allowed by their consent.

The School of Physic Act gave, in express terms, a legal title to the fees for the Clinical and Professorial Lectures therein mentioned; but in the Petition, as well as in the Answer, these are treated as distinct from the share of surplus profits of the Dissecting School. Mr. Fitzgibbon, in the instructive sketch which he gave of the fulfilment of the original project of Sir Patrick Dun, endeavoured to bring this share within the prospective reach of the Act. Mr. Butt ingeniously endeavoured to bring it within the spirit of the Act. But can we say that the Act, either expressly, or by plain implication, interfered with the independent power of the Board to maintain under their own control, this separate and special department, and from time to time to regulate it on their own authority alone, according to their view of what was most conducive to the efficiency and success of the Medical School of the College? This would be at variance with the usage, and would not be required by law. I must observe here that I desire not to be understood as intimating that the explanatory statement of Mr. Fitzgibbon, or the suggestions of Mr. Butt on this head, are not deserving of consideration with reference to the equity of the appropriation. But we have been asked simply to decide the question raised by the Petitioner as to the legal right of the Board, and not whether the arrangement was equitable. If the discretionary control belonged as of right to the Board, the Visitors (as such) have no authority to go beyond the inquiry whether this discretion has been exercised by them in good faith, and according to the best of their judgment. The like was decided in the case of Mr. Purser. It would not be becoming in us here to obtrude an opinion, unasked, upon a matter which is outside our jurisdiction as Visitors.

The University Professors, under the School of Physic Act, had been, at the first, Lecturers in the College; a part of the staff of teachers which, under the general words of the Charter of Queen Elizabeth, and the more precise language of the code of King Charles I., the governing body of the College were empowered to provide, in order to prepare and qualify the "Studiosi" of the College for graduation afterwards in the University. The power of appointing this training and teach-

ing staff, consisting of Tutors and Lecturers, and the duty of prescribing the curriculum of education to be taught, explains the connexion between the College and the University; whilst the placing of the corporate head of the latter in the office of prime Visitor of the College, shows the distinctness of the two corporate bodies, which are so often confounded together. They are distinct, but integral and connected parts of the one Institution, which has for its object not only education but graduation in Arts and Faculties.

Mr. Fitzgibbon has shown how that part of the College staff, which was at first appointed with reference to the faculty of Medicine, was made use of in the carrying out of the project of Sir Patrick Dun, for constituting a complete School of Physic. It is not necessary for me to go further back than the 40 Geo. 3, c. 84 (Ir.), under which Dr. M'Dowel was elected; but I may observe that I do not consider that this Act, or the earlier Act of the 25 Geo. 3, absorbed or extinguished the primary character and status of the College officer, in the statutory office of Professor in the School of Physic. The Act was passed, according to its preamble, for the purpose of establishing a complete School of Physic in Ireland, and for advancing the School in the science of Medicine. The governing body of Trinity College and that of the College of Physicians were to co-operate. Certain Professors were to be supplied by each body respectively. Those from Trinity College were designated in the Act as "University Professors," and those from the College of Physicians, "the King's Professors." It is enacted that both sets of Professors should be elected "in the manner, for the time, and subject to the regulations hereinafter mentioned" (s. 13).

Some of these regulations were prescribed in the Act; others were to be made from time to time, under the power conferred by the 26th section, by which it was enacted "that the President and Fellows of the King and Queen's College of Physicians shall have power from time to time to make rules and orders to regulate the conduct of the King's Professors." These regulations were to be laid before the Board of Trinity College; and in like manner, power was given to the latter body to make rules and orders from time to time to regulate the conduct of the University Professors. These were to be laid before the College of Physicians. There is a proviso that the said rules and orders "shall not be inconsistent with any of the clauses or directions contained in this Act." A mutual right of appeal was given to each body, in the event of its disapproval of any of the rules and orders of the other. The Visitors of the latter (or,

in the case of the College of Physicians, any two of them), were empowered to hear the matter of the complaint summarily, and to grant redress, if they should think the complaint to be well founded.

Having thus made provision for a system of joint control over the respective Professors in the School of Physic, and for a code of directions to the Professors as to the conduct of the School, authority is next given to the governing body of each College to admonish any of its Professors who should wilfully neglect to perform the duty of his Professorship, and, in case of obstinate neglect, to deprive him of his office. This is subject in each case to an appeal to the Visitors, against the order of admonition or of deprivation.

The School of Physic Act was amended in 1867, by the 30 Vict. c. 9. The state of the Medical School had been inquired into by the Royal Commissioners, who were authorised to report on the College and University, and who made their report in 1853. In the Appendix (p. 225), there is an instructive paper containing the questions put to, and the answers given by, the Professors in the Medical School. In answer to questions 11 and 12, they say, "No Professor in the School of Physic can hold with his Professorship the Regius Professorship in the University, or a Fellowship (an honorary Fellowship excepted) in the College of Physicians. These restrictions are imposed by the Act (40 Geo. 3, c. 84). With these exceptions, the Professors are under no condition of resigning or forfeiting their Professorships on attaining any Collegiate or other appointment or office." In answer to question 13, after referring to the Professor of Chemistry, they go on to say, "Most of the other Professors hold certain professional appointments in the city, such as Physicians and Surgeons to Hospitals and to other public institutions. These appointments are added to the signature of each Professor subscribed to this paper." The signatures are given in p. 238. They include the names of the Regius Professor of Physic (Dr. Stokes), Physician to the Meath Hospital, and of Dr. Robert William Smith, the Professor of Surgery in Trinity College, and Surgeon to the Richmond Hospital.

The Commissioners having recommended that the provisions of the School of Physic Act should be reviewed and amended, the Act of 1867 (30 Vict. c. 9) was subsequently passed. It opened the Professorships to all duly qualified persons, irrespective of their religious creed. It placed the Professor of Surgery in Trinity College and the University Anatomist on the

staff of Lecturers, who, under the 40th Geo. 3, were appointed to deliver Clinical Lectures in Sir Patrick Dun's Hospital. It repealed the 31st section of the 40th Geo. 3, which regulated the periods and the vacations as to Lectures, and it empowered the governing bodies of the two Colleges (Trinity College and the College of Physicians), each with the assent of the other, to make regulations respecting the Lectures to be given by its own Professors, with an appeal to the Visitors of the College refusing to agree to the regulations proposed by the other College. It also repealed the 41st section, by which a Fellow of the College of Physicians vacated his Fellowship on accepting any of the Professorships in the School of Physic, and those who had so vacated their Fellowships under this section were restored to them, and to all the rights and privileges thereunto belonging.

I may here observe that the "Professor of Surgery in Trinity College" mentioned in this Act, is not the University Professor of Anatomy and Chirurgery in the School of Physic. The title of the former is under the Statutes of the College, and not under the School of Physic Act. The former is not, and could not be, put (except by Act of Parliament) under a prohibition against holding an office in the Richmond Hospital. Indeed, the eminent Professor who, by the Act of 1867, was put on the staff of Clinical Lecturers in Sir Patrick Dun's Hospital, was, at the time, and now is, a distinguished colleague of Dr. M'Dowel in the Richmond Hospital. The Act of 1867 contains no prohibition as to his holding this office; so far as can be surmised, the Legislature adopted the opinion of Dr. Stokes, of which the Commissioners approved, that "Clinical Lectures to be effective should be delivered by Hospital Physicians who are themselves in practice." (Rep. p. 40.)

After the passing of this Act, in the year 1867, the notion seems to have arisen that the 26th section of the Irish Act that was amended, supplied a power of legislation by which supposed shortcomings of the Legislature might be conveniently remedied without the trouble and the risk of again resorting to the Imperial Parliament. In the month of February in the next year, a resolution was passed by each of the two Colleges, with reference to its own set of Professors in the School of Physic, by which it was resolved that in future none of these Professors "shall be allowed to hold an appointment as Medical Officer to any Clinical Hospital other than that of Sir Patrick Dun. N.B.—This rule not to apply to existing arrangements."

We were requested, on behalf of both parties, and we

undertook, to give our opinion on this, whether this Resolution is a rule to regulate the conduct of the Professors of the School of Physic, within the meaning of the 26th section of the 40th Geo. 3, c. 84. It is a question of considerable importance to the Professors, and to the great Medical School which has become so successful a department of the College and University. I have, therefore, given to it the best and most careful consideration I could bestow, but I regret to say that the Visitors have not been able to agree in opinion upon it. I feel compelled, therefore, to state at greater length than I should otherwise have been disposed, the reasons which have led me to the conclusion that the Resolution is not within the scope and meaning of the enactment.

We refused to admit evidence of eminent Medical men that was offered for the purpose of proving that in their opinion the rule was unnecessary and inexpedient. We did so on the ground that the question as to its validity is a question not of the propriety of the rule, but of the power to make it. If it is within the power, it is in contemplation of law to be regarded as if it was set forth in the Act by which the power was conferred. Even, in that case if it should be thought unreasonable by every one but its framers, it would not, therefore, be void in law, because the discretion of the framers is absolute within the limits of the power, and the rule final whilst it exists.* In all such cases of the delegation of legislative authority, the parties who are authorised to exercise it are, so far as it extends, substituted for Parliament itself. Where the subject-matter is in its own nature indifferent, alterable, and so acknowledged, involving details that from time to time require to be modified and adapted as circumstances demand, it is convenient to give such authority, as where it is given to Judges to make rules and orders intended to regulate the procedure of their Courts. But where rights under the protection of the law of the Realm may be affected, it is reasonable, and in my opinion it is requisite, that in such a case the delegation of legislative authority should be conferred (if at all) in language so unequivocal as not to admit of any other construction that is reasonable.†

In support of the validity of the Resolution, it was urged that the word "conduct" has a comprehensive meaning, and that the proviso at the end of the section is simply that the rules and orders should not be inconsistent with any of the clauses or

* *Attorney-General* v. *Sillem*, 10 H. of L. Cas. 764-5.
† 10 H. of L. C. 723, 754, 775.

directions in the Act. But the question is not as to the meaning of the word "conduct," separated from the context, and disconnected from the other provisions of the Act. Bishop Butler observes "that in almost everything that is said there is somewhat to be understood beyond what is explicitly laid down, and which we of course supply." This is the function of the interpreter. Are we to take the rules to regulate the conduct of the Professors of the School of Physic, as relating to their conduct in their character and capacity of Professors, in the execution of their office; or are we to include external conduct, not in their capacity of Professors, but which, in the opinion of the framers of the rule, might have an indirect influence on their internal conduct? What appears to me to have been intended was, to give the governing bodies of the two Colleges for the purpose of joint management of the School of Physic, a power like that which the Common Law gives to a Corporation, to make from time to time ordinances, called by-laws, relating to matters of an executive character connected with the discipline and management of the Corporation and the conduct of its affairs, but which are not allowed to interfere with any right that is under the protection of general law. To remove such a right from under such protection, and put it under the order of a majority of a body other than Parliament, to be dealt with from time to time at their will and pleasure, is to my mind so unconstitutional that I will not give to the words of the power by which it is said to be conferred, the effect contended for, if they are susceptible of a restricted and reasonable interpretation.

I have no reason to suppose that those who now have authority under the Act to make regulations, would use it otherwise than with a view to effectuate what they believe to be the purpose of the Legislature; but having here to decide a question of law on a public Statute of the Realm, that can have but one authoritative meaning, I must be guided altogether by the rules and principles by which every judicial tribunal in the empire is responsibly bound. The addendum to the rule, that it was not to interfere with existing arrangements indicates the consciousness of the framers that without these words the rule would have been unjust in its operation. But this addendum was not necessary in order to give validity to the rule, however well intended to prevent injustice that confessedly would have been inflicted, if the rule were otherwise valid. According to the case of the *Attorney-General* v. *Sillem*, already referred to, a rule, valid as a rule of regulation, would not require this addendum. No man has a vested right in the procedure of a

suit by which he seeks to maintain a right, and which is to be conducted according to the procedure of the Court in which he sues. But a right that exists independently of procedure cannot be abridged or varied by a law that is not expressed in terms that are plain and peremptory. This is the reason of the rule against retrospective operation, to which Mr. Tandy referred. The distinction between a law that affects a right and that which regulates procedure is founded on immutable justice, and is well explained in a judgment of Baron Wilde to which Lord Wensleydale refers with marked approval in the case of the Attorney-General *v.* Sillem.*

The regulations of the conduct of the Professors in the School of Physic that were to be made from time to time were to be consistent with and supplemental to the directions in the Act. The whole was meant to constitute a code of direction to the Professors in the School, to be enforced by admonition or deprivation as the neglect of duty might require. The cursus Scholæ is analogous to the cursus Curiæ in the case of procedure. It is, in its nature, proper to be regulated from time to time by a governing authority. This may be exercised sometimes in a way that might be unjust or oppressive, but that is no reason why a lawful right should be subjected to such occasional interference, especially where the words of the power do not necessarily require to be interpreted so as to admit of such interference.

It may be the better opinion, upon which I am not called on here to pronounce, that the prohibition in the Resolution of February, 1868, would or might tend to secure the more earnest and efficient discharge of professorial duty, but this involves a question of principle and of policy that is much disputed amongst those who are specially competent to give an opinion. Partial private opinion ought not to be converted into general public law otherwise than by the Legislature. The Resolution is an absolute unqualified prohibition without reference to the extent of duty to be performed in the other office in any case; or to arrangements that might be available to leave the Professor free to execute his professorial duties with efficiency and satisfaction. No inquiry is provided for, as to how far the holding of another office in any case or under any circumstances might be compatible with the efficient discharge of the duty of the Professor. The prohibition is general, absolute, and final. When a general law is passed, there has been opportunity

* 10 H. of L. Ca. 763.

afforded for free and full discussion in Parliament, before the assent of Queen, Lords, and Commons has been obtained. If Parliament delegates its supreme power to others, I cannot but agree with Lord Westbury, Lord St. Leonards, and Lord Kingsdown, that the extent of the power thus delegated ought to be measured by that sense of the words which fairly satisfies their meaning, without interference with a lawful right. The Resolution is not part of the cursus Scholæ to which the Professor is bound to conform under the obligation of the Oath or Declaration of Office. It is in effect a rule of disqualification. The Statute provides for the administering and taking of the Oath of Office on the same day immediately after the election. The election and admission by swearing in, is regarded by the Legislature as one transaction. The obligation on the Professor does not attach until the office has been accepted, and in this respect the Resolution does not limit eligibility, but it operates like a condition subsequent, if not to avoid the election at least to prohibit the enjoyment. This cannot be effected otherwise than by precise and peremptory legislation. The Professor accepts his office subject to the regulations as to his Professorial conduct, which may be prescribed from time to time by the proper authority. But he does not place his lawful right at the disposal of the same authority. That the rule in question takes away a vested right in this case is clear to my mind, and this is one of the main grounds of my objection to it, as not being within the scope of the power conferred by the Statute.

In 1846, Dr. M'Dowel was appointed to the office which he is now required to resign. It is a freehold office. For two septennial periods he held it together with the Professorship; but although he is expressly declared by the Statute to be capable of re-election, and has been re-elected, and is assumed to have, when so re-elected, a title to the office for another septennial period, he was required, on the part of the Board, before that he could be admitted by swearing in after the last election, to resign his freehold office, which he has enjoyed since 1846. In the answer of the Board, it is stated that they would not have elected him to the Professorship if they knew, or believed, that he would not comply with the Resolution. Practically, therefore, they have treated that as a disqualification, which was not to be found in the School of Physic Act, when he was first elected in 1858, or when he was afterwards continued in 1865. It is not in the Act of 1867, by which the former Act was amended. It has been created (if at all) by the Resolution of February 1, 1868. It is not dealt with

as a rule, by which the conduct of the School was regulated, but as a public law, by which the conditions of admission to, and enjoyment of, the Professorship were altered. He had a vested right, under the protection of the public law of the realm. He had no vested right in the regulation of his conduct as Professor in executing the duty of his office. He was (as I have said) subject as Professor to such regulations relating to the conduct of the Professorship as might be made from time to time by the governing body, to whose authority he submitted himself in his capacity of Professor within their domestic jurisdiction. A general law, intended to secure efficient performance of the duty of Professors, is not to be confounded with a regulation made to define the duty to be performed, or the time and manner of performance; nor is regulative authority within the limits of the Common Law to be confounded with uncontrolled parliamentary power outside these limits.

Dr. Ball admitted—and, in my opinion, properly—that the resolution would not be valid as a by-law *simpliciter*, but that it must derive its validity altogether from the Statute. Mr. Tandy, however, seemed to take a different view, and referred to the case of *Adley* v. *Reeves*,* in which there is a dubious *dictum* of Lord Ellenborough, that seems to assume the validity of a by-law to restrain any member of an incorporated prescriptive company of oyster fishermen from being engaged in the trade of sending oysters to market from any other ground than that of the company within certain limits. There were further objections which made the by-law void; and it was not necessary to decide on any other. It was the case of a trading company, originally founded in partnership agreement, preserved in an ancient custom before the company was incorporated. It was proved that there was a prescriptive usage to make orders for regulating the company and the oyster fishery, with fines and penalties for the breach of such orders; but this ancient usage was held not to be sufficient to sustain the by-law. The case had been before Lord Eldon in the Court of Chancery before it was sent to the Court of Law. He was not prone to rash or incautious dicta. He was alike cautious and precise. He observed that "there was not an instance of a by-law like this, restraining the individual members of the Corporation from being concerned either in any other place, or within given limits in the same trade."† When the case

* 2 M. & S. 53.
† 17 Ves., J., 822.

came back to him, after the decision of the Court of Law, in referring to the objection as to the plaintiff being concerned in another company, he said the answer was, "that he was a proprietor of a contiguous fishery long before the defendants became a Corporation; and the question (taking them in that character) would be, whether a by-law, compelling a man to part with his estate, which he possessed as such, paternal or acquired, is good to exclude him from participating in the profits of this company, on the ground that he had that estate. I should have more difficulty" (he adds) "in answering that question in the affirmative, than upon any other question between these parties."* In the report in 1st Merivale,† he appears to have asked the significant question, "Can a by-law of the Corporation force him to part with his estate?" It is not necessary to refer to other authorities, in order to sustain the conclusion at which I have arrived. Perhaps, however, it may not be irrelevant to refer to the case of the *Calder and Hebble Navigation Company* v. *Pelling*,‡ as an instance of restrictive interpretation. In that case a company was empowered by a local Act to make by-laws for the well governing of the bargemen, watermen, and boatmen, who should carry any goods, wares, and merchandise, upon any part of the navigation. Baron Alderson says, "I do not apprehend that these words mean the government of those persons, with the view of regulating their good conduct and character, but only of their conduct in their character of bargemen, watermen, and boatmen, who shall carry goods, wares, or merchandise, along the navigation—that is to say, in their capacity of bargemen, watermen, and boatmen, in so far as they carry goods on the navigation."

It is not necessary for me to put the case higher than this, that a like restriction on the generality of the effect of the words of the power in question is legally admissible, and that the wider sense is not the necessary, perhaps not the natural meaning. Whatever may be the convenience of having at hand such a delegated Parliamentary authority as is contended for, I must not, in order to secure it, be tempted to swerve from what I believe to be the established course of judicial duty. So anomalous an exception to general law, as by a delegation of authority to give to any man or body of men a right to take away a free-

* 19 Ves., J., 305.
† 108–109.
‡ 14 M. & W. 89.

hold interest already vested, must be expressed in words that are so clear as to be coercive. If they are open to reasonable doubt, and a choice is left between a limited and a constitutional sense on the one side; and on the other a vague laxity that lets in the destruction of right, I abide by the maxim—*tutius erratur in mitiori sensu.*

There is a test to which I may refer, as it seems to my own mind to be decisive. It is admitted that if this rule of prohibition be valid, a rule to prohibit the Professors from engaging or continuing in private practice would be equally valid. It has appeared in the present case that the opinion prevails in the Board that, *cæteris paribus*, a Candidate not engaged in private practice ought to be preferred. Suppose this opinion should be embodied in a rule, with a view to make it a law, but that the College of Physicians should disapprove of it, and ultimately appeal to us under the 27th section, we would be bound to hear the complaint summarily. It would depend on our decision as Visitors whether or not this rule should be added as if it were a new clause in a Statute of the realm. The concurrence of the College of Physicians in the case supposed, would not only not be required, but the rule might be upheld by the Visitors here, in defiance of the deliberate disapproval of the President and Fellows of that College. Against the reasons that might weigh with the Board in favour of such a rule, as calculated to secure the undivided attention of their Professors in the School of Physic, the College of Physicians might rely on the benefit to be derived from a large medical experience—opportunity of daily conference with eminent members of the profession, the salutary influences of practice, and the stimulus, as well as the restraint of sound professional opinion. There may be much to be considered on both sides; but as to the Visitors, the domestic judges of this College community, neither of them having any special medical knowledge to guide them, what scales would they have in which, as legislators, they could weigh the advantages and disadvantages of the proposed rule, so as to be in a condition to pronounce a decision that would be as final and as obligatory as if it had been set forth in the Act of Geo. III., or in the Act of 1867? But more than this—even if passed into a law by the Visitors of this College, it would not bind the King's Professors in the School of Physic. Thus we might have in the same School, under the same Statute of the realm, one set of the Professors prohibited from private practice, and another set, left free and encouraged to practise, so far as they could use their freedom

without prejudice to the discharge of the duty of their Professorships. In the case of each set, the Visitors, by virtue of their office, constitute the final tribunal to decide on questions of internal conduct—the conduct of Professors acting as such in the execution of their office within the College jurisdiction—but there the authority of Visitors ceases. To me it seems that the allowance of an appeal to the Visitors, as given by the 27th section, plainly imports that the subject matter of the 26th section did not extend beyond the like limit. Each set of Visitors might judge of the propriety of a rule for regulating the internal conduct of their own Professors under their surveillance; but to have a conflict of general law as to external conduct, is what I cannot suppose or presume to have been meant by the Legislature, in the absence of an intention unmistakeably expressed to that effect.

The Act, as I understand it, proceeds upon a policy of internal regulation and supervision as sufficient to effectuate its purpose.

A like policy is acted on by the Court of Chancery in England as to the free grammar schools. In the case of the *Attorney-General* v. *Hartley*,* before Lord Eldon, C., an information was filed with a view, amongst other things, to have the schoolmaster removed on the ground that he was the vicar of the parish. In p. 376, Lord Eldon says—"A schoolmaster has his duties prescribed by the rules and regulations, and if you please so to put it, by the practice of the school. If being vicar of the parish, he cannot observe those rules and regulations, and act according to that practice, that would be a ground for his removal from the school. . . . . If you could show that he had given so much personal attention to the vicarage as to neglect his school, the Court would dismiss him on the ground of his neglect of duty as schoolmaster, but I cannot find any pretence for that in the evidence."

In another and similar case before the late Lord Justice Turner (when Vice-Chancellor), *The Attorney-General* v. *Bishop of Worcester*,† that learned and eminent Judge observes, on the part of the information which advanced the general position that no boarders ought to be admitted into the school—"that Lord Cottenham was adverse, most adverse, to the admission of boarders into these schools is clear from his judgment not only in that case, but in many other cases which were referred to in

* 2 J. & W. 353.
† 9 Hare, R., 363.

argument; but neither in that case nor in any of the other cases do I find that he prohibited their admission."

I have not been able to find any sufficient indication of the intention either of the Irish Parliament, under King Geo. III., or of the Imperial Parliament in 1867, to impose any legislative restraint or condition on the Professors, other than what has been in terms set forth in the Acts of Parliament, or has been provided by way of regulation of their Professorial conduct in the execution of their office. I cannot reconcile it to my views of what is constitutional and lawful, that by loose general words an absolute power of making a general law, by which the Common Law rights of any class of Her Majesty's subjects might be injuriously affected, should be delegated to any select body of men, other than Parliament itself, however respectable they may be, and deserving of public confidence. I think this involves a great constitutional principle; and, as I understand it, the limits of the Common Law, in allowing the delegation of a ministerial regulative or executive authority, ought not to be exceeded.* But in the present case I have only to decide whether the general words used are not, on the soundest principles of judicial interpretation, capable of being restricted so as to keep within this constitutional limit.

For these reasons, which I have endeavoured to explain and enforce, I am of opinion that the Resolution of February, 1868, is unlawful and void.

I come next to a part of this case that somewhat pressed me during the agument, but which, on further consideration, I have been able to clear up to my entire satisfaction. It occurred to me that there was reason to conclude that from what took place between Dr. M'Dowel and the Board (whatever may have been his intention), he gave them reasonable cause to believe, and that they were led to believe, that he acquiesced in the terms of the notice of election, in which the Resolution of the 1st February was set forth, and without the addendum, as the Board took this to be inapplicable during the vacancy when there was no existing arrangement. I was led away for the time by early recollections of cases in Corporation law, in which a man sought to put the Court in motion on his own behalf in a matter where the Court had a judicial discretion. No man is in such case allowed to take his chance of inconsistent advantages, and treat as void for one purpose what he has ac-

* See *Rutter* v. *Chapman*, 8 M. & W. 98, 104, and 114.

quiesced in as valid for another. This has been carried so far that where a party was present and concurred at the time of an objectionable election, even although he was then ignorant of the objection, he was not allowed to be a relator in a *quo warranto* information, for the purpose of having the election declared by the Court to be void. It was said "a Corporator must be taken to be cognizant of the contents of his own Charter and of the law arising therefrom."* In such cases the Court, in exercising its discretion, takes into account the conduct of the party who seeks to put it in motion, but in the present case the question is different. If the Resolution stated in the notice of election is void in law, no Court would lend its aid to carry it into effect. It could not be enforced ; no acquiescence could render that legal, which is in itself illegal. Here the question arises on a public Statute of which every Court must take judicial notice. "I agree to the doctrine," says Mr. Justice James Parke, "that a party having made admissions by which another has been led to alter his condition, is estopped from disputing their truth with respect to that person and that transaction ; but I think it does not apply here, where the question raised by the party supposed to have made the admission, is one not of fact, but of law" (*Stratford and Moreton Railway Company* v. *Stratton*.† The case in which this was said was one in which a Committee of a Railway Company, of which the Defendant was one, were empowered to make calls. Calls were made, on some of which the Defendant had made payments, but on his being sued for further payments had set up the defence that the calls were not made as the Act directed. It was decided that the Defendant was not estopped from relying on the illegality of the act of the Committee in which he had concurred. Mr. Justice Taunton, says—"It was not competent to him to dispense with the Statute under which he and the rest of the Committee professed to act, even for the purpose of rendering himself liable to be sued. The calls being contrary to law, it lies in his mouth to take that objection, though he was a party to their being made." In truth, the Court itself was bound to take the objection. I am, therefore, of opinion, that if the Resolution here is void in law, it must be treated by every Court as a mere nullity, and therefore as incapable of being enforced against any party.

I have thus, to the best of my ability, answered the questions

* 2 Selw., N. P., 1164, 11th Edit.
† 2 B. & Ad. 526.

of law, which we were requested and undertook to answer, for the guidance of the parties. The case is one that will require such an amicable adjustment, as the interests of the Medical School, the independence of the Professors, and the authority of the governing body of the College, properly demand.

Dr. Battersby, Q. C..—Two questions are submitted to tors:—

1st. "Whether a resolution or order of the 1st February, 1868, made by the Board of Trinity College, was and is *ultra vires*, and void, or a reasonable rule and order to regulate the conduct of the University Professor."

"2nd. Whether a resolution or order of the said Board, made on the 24th October, 1872, diminishing the emoluments of the University Professor of the School of Physic, and appropriating a portion of the fees for dissections, to another Professorship, is *ultra vires*, illegal and void."

In order to form a correct judgment on these subjects, it is necessary to consider the exact status of Dr. M'Dowel, the University Professor, who has set on foot this inquiry.

In the year 1800, a Statute was passed, reciting previous Acts, 21 Geo. II., 25 Geo. III., c. 42, 31 Geo. III., c. 35, and providing for the establishment of "a complete School of Physic in this Kingdom," to consist of seven Professors, four on the foundation of Sir Patrick Dun, and three of the University Professors.

This Act 40 Geo. III., c. 84, s. 4, provides that an Hospital shall be built in which Clinical Lectures shall be given, and

Section 11, That the Professors shall read and give Lectures upon patients in the Hospital.

Section 12, That Lectures shall be given upon the cases of the patients in the Hospital; and

Section 35, That until an Hospital can be provided, Clinical Lectures may be given in such Hospitals as the Governors thereof will allow.

Such are the duties of the Professors in the School of Physic; but the connexion of the University Professors with Trinity College is not thereby severed: on the contrary, they are to be supported by the College; and by section 26 the Provost and Senior Fellows are empowered to make rules and orders to regulate the conduct of the University Professors.

Dr. M'Dowel, who had been Physician in the Whitworth, Richmond, and Hardwicke Hospitals, from 1846, was in 1858,

appointed University Professor of Anatomy and Chirurgery in the School of Physic.

In 1865, Dr. M'Dowel was continued or re-elected to the same office, and on the 26th October, 1872, he was again re-elected.

By a Resolution of 1st February, 1868, the Provost and Senior Fellows of Trinity College determined that in future no University Professor in the School of Physic should be allowed to hold an appointment as Medical Officer to any Clinical Hospital other than that of Sir Patrick Dun's. This rule not to affect existing interests.

Dr. M'Dowel had express notice of this Resolution before his re-election in 1872. And on the 16th November, 1872, the College caused Dr. M'Dowel to be served with a notice which he calls an admonition, requiring him to abandon his connexion with all the Hospitals except Sir Patrick Dun's.

Before his election on 24th October, 1872, and after that election, his attention was called to the order by letters from the Registrar; and subsequently by a formal notice from the Registrar, dated 24th October, 1872, he was requested to obey it, and resign his appointment at the Whitworth Hospital, which he declined, and therefore this inquiry has been sought—Dr. M'Dowel insisting that he is not bound to obey the order, because it is not warranted by the Statute, or a reasonable rule or order to regulate the conduct of a University Professor.

Whether it is so, or not, must depend upon the meaning of the 40 Geo. III., c. 84, s. 26, which provides that "the said Provost and Senior Fellows, or a majority of them, shall have power from time to time to make rules and orders to regulate the conduct of the University Professors, provided that the said rules and orders shall not be inconsistent with any of the clauses or directions contained in this Act."

There are no directions in the Act regulating the conduct of the Professors, except those providing that they shall read and give Clinical Lectures, *upon the patients*, in the said Hospital (sect. 11), to be delivered by them "in a room in Trinity College, until the Hospital shall be built, and afterwards *in the Hospital*." But it is said that the election of a Professor confers upon him an office which cannot be interfered with pending the term of his appointment, which by the Act is seven years, provided he deliver the prescribed number of Lectures, and that it would be unconstitutional to deprive him, except upon proof of absolute neglect, of this limited duty, of delivering a certain number of Lectures.

Dr. M'Dowel deposed that, in the Whitworth Hospital there are about forty-five beds, to which he must attend three days in the week for an hour and a-half each day—an onerous engagement. And if Dr. Johnson be correct in defining a Clinical Lecture to be "a discourse upon a disease made by the bed of the patient," much more is required of the Physician than merely coming in, sitting by the bed-side, discoursing for a certain number of minutes, and then running off to repeat the same process in some other Hospital. I believe that a Clinical Professor in an Hospital is bound to examine carefully, and prescribe for, every patient under his care.

We have all seen professional men in such a hurry to get rid of one patient, and to go to another, as not to take time to learn the particulars of the disease for which he was paid to prescribe. How much more necessary is it to have strict rules requiring attention to the paupers in an Hospital? The College say (Case, p. 5, No. 16), it was found that the system of allowing Medical Teachers to hold appointments in more than one Clinical Hospital at the same time interfered with the regular and proper discharge of their duties by the Medical officers; and that the rule of 1868 was made to remedy this evil. It may be easily understood, that if a Professor should expend his two hours in general observations at the bed-side, without attending to the patient, it would be difficult to prove actual neglect of duty. But if the Governors of the Institution should think that a Professor who had not so many avocations, and who could better devote his time and attention to the patient and his disease, they might reasonably make a rule to remedy the evil—and they have made a rule which appears to me to be reasonable in the present instance.

Dr. M'Dowel is admitted to be a gentleman of very superior attainments, and it is not necessary that the Board should prove any misconduct on his part to justify the rule. They only say, that the system of one Professor holding appointments in several Clinical Hospitals at the same time, interferes with the regular and proper discharge of his duties.

The Governors of the Hospital did, in fact, in 1869, complain that the attendance of Dr. M'Dowel at the Hospital was "irregular and insufficient," and the Board of Trinity College passed a Resolution dispensing with his attendance at the Hospital, and appointing a Surgeon in his place. But this matter is not now before the Visitors, and it is to be regretted that such a step should have been taken without affording him a hearing.

Still the proceeding shows, that, in the opinion of the governing Body, at least, there may be remissness calling for intervention, without proceeding for deprivation by reason of actual neglect, under sect. 28.

The argument most pressed on this part of the case by the Petitioner was, that the rule imposed a new disqualification, the only previous disqualification under the statute being on the ground of religion, which was removed by 30 Vict. c. 9, s. 1. But to me this resolution appears to be, not a law to disqualify for election, but a rule to regulate conduct after election, as might be the case, if a Professor were to engage in a trade or business which diverted his attention from the discharge of his duties as Professor, although he might attend at the Hospital for the number of hours prescribed.

The observations of Lord Wensleydale in the case of *Reg* v. *Warden and Assistants of the Sadlers' Company*, H. L. 404, are apposite to this view. The charter of the Company gave power to make laws for the good government of the Wardens, &c., and of all others of the mystery. They made a by-law that no person who had become a Bankrupt, or otherwise Insolvent, should thereafter be admitted a member of the Court of Assistants of the Company, unless it be proved to the satisfaction of the Court, that such person, after his Bankruptcy or Insolvency, had paid and satisfied his creditors the whole of their debts, or should have established a fair and honorable character for seven years subsequent to such his Bankruptcy or Insolvency, to the satisfaction of the Court. One Dinsdale had been elected; he became Insolvent after, and was removed. Application was made for a mandamus to restore him. Lord Wensleydale, 462, says:—"The first question in this case is, whether the by-law upon which the case principally depends, is reasonable, and therefore valid, or not. The Wardens and Assistants have power by their charter to make by-laws, which they shall think fit, in their sound discretion, for the good rule and government of the Wardens, &c. of the mystery of Sadlers. Under that power I do not feel the difficulty which has presented itself to some of the Judges, that the body could not limit the number of the persons to be elected, by superinducing new qualifications as to which the charter is silent. To secure the good government of the Company, it might be proper to make fit provisions, that those who have the rule and management of the affairs of the Company should be well qualified, and it is very reasonable that those who are to have the care and custody of the money of the Company should be trustworthy and responsible." Rule refused, because Insolvency was after admission, not before.

But it was not controverted that rules might be made for the good government of the Company, although not mentioned by the Charter, and although imposing a new qualification. It would be mere pedantry to compare and analyse all the cases which are like this (none are the same), and the arguments of the Judges, who have differed in nearly all of them, but agree in this, that when a power to make rules or by-laws is given, by Statute, or Charter, or Prescription, the question always is, whether the rule, or by-law, is within the purview of the Statute, Charter, or Prescription. And in my opinion, in the present case, every engagement into which the Professor enters, that may affect the efficient discharge of his duties as Professor, is within the purview of the Statute of 40 Geo. 3, and there may lawfully be an order upon him to desist from it. A governing body must be allowed some power and some discretion, or they cannot manage. In one of the leading cases on this subject, *The Attorney-General* v. *Sillem*, 2 Hur. & Colt. 584, the decision turned on the meaning of the word "practice," here it depends upon the word "conduct." There the majority of the Judges held that giving an appeal which had not before existed, would be conferring a "right," not regulating a practice. Here, I think, "conduct" comprises everything that may affect the efficient discharge of his duty by the Professor, and that too many undertakings would do so.

Dr. Johnson explains the word "conduct" as "management," and quotes a sentence from Bacon, "Young men in the conduct and manage of action, embrace more than they can hold, stir more than they can quiet, and fly to the end without consideration of the means."

This definition seems exactly to square with the apprehensions which suggested the making of the rule in question.

Dr. M'Dowel contends that the saving of "existing interests," in the resolution of 1868, applied to him after his then appointment for seven years had expired, and exempted him for all time from the rule; but the person to be appointed for the next seven years might be a stranger, and no exemption in his favour could have been intended.

Dr. M'Dowel also contends that his not having objected to the rule of 1868, although he did object to the memorandum concerning private practice, shows that he was led to believe that the rule would not be insisted on. But it might also be contended at the other side, that they, by his silence on the subject, were persuaded that he intended to accept the office subject to the rule.

In my opinion the order of 1st Feb., 1868, is legal and valid, and may be enforced by admonition and deprivation, under 40 Geo. 3, c. 84, s. 28. But the notice of the 24th Dec., 1872, being disclaimed, or withdrawn by the Board as an admonition, that cannot now be relied on by them as such.

The Board of Trinity College insist, that Dr. M'Dowel having submitted to be elected, is bound, as by a contract; but this cannot be: the advertisement of 2nd July, 1872, was a statutory notice, and could not be altered. The resolutions of 24th Oct., 1872, purported to change it altogether, which having regard to the 40 Geo. 3, could not be done. Dr. M'Dowel, therefore, when he accepted the office, did not make any agreement, but accepted the office of University Professor of Chirurgery and Anatomy, with the rights thereunto belonging. And the case of Strafford and Morton R. Co. *v.* Straffon, 2 B. & Ad., 519, shows that he might do so, and yet deny the legality of some proceedings of the Board.

Now as to the question of fees. Sec. 13 of the 40 Geo. 3, c. 84, before referred to, provides that there shall be three Professors in the University of this kingdom, who shall be called University Professors, that is to say, a Professor of Anatomy and Chirurgery, a Professor of Chemistry, and a Professor of Botany, and that the present Lecturers in said several branches shall be constituted and appointed Professors in the said several branches respectively. And that the University Professors shall have perpetual continuance, and (sec. 11) be supported at the expense of the University, and be paid £3 3*s.* by each pupil for Clinical Lectures, and (see sec. 33) be at liberty to charge reasonable fees, to be paid by all such persons as attend the respective Lectures, except the Clinical Lectures, the fees of which have been already provided for; the said fees to be from time to time regulated—in respect to the said University Professors, by the Provost and Senior Fellows of Trinity College.

Under these provisions, those fees for all Lectures delivered as Professors of the School of Physic, absolutely belong to the Professors; and by sec. 32, both the King's Professors, and the University Professors, are to "deliver their Lectures in a room or rooms provided for that purpose in the Hospital to be erected for Clinical Lectures, and until such Hospital be erected, the Provost of Trinity College shall be, and he is hereby, empowered to grant a room, or rooms, where such Lectures may be given; and that said rooms shall be at all times under his inspection and control, in like manner and under the same restrictions

and regulations which are established with respect to all other rooms in said College."

After the erection of the Hospital, the Lectures ought to have been delivered there; some of them (how many exactly is not stated) were so. And if no other duties were performed by Dr. M'Dowel but those imposed by the 40 Geo. 3, and in the Hospital, all the fees would belong to him, and no question could have arisen. But it appears that there were no dissections, or demonstrations in Practical Anatomy at Sir Patrick Dun's Hospital, while there were such in the College Dissecting rooms, both before and after the 40 Geo. 3, the expenses of which were defrayed out of the fees received there; and Dr. M'Dowel being also University Professor of the School of Physic, appears to have always assisted in the Dissecting-rooms, and been paid for so doing out of the fees received there. For a certain period, he or his predecessors received all the fees, and paid thereout all the assistants and other expenses, retaining the surplus. And this Dr. M'Dowel now seems to claim as a right. But while he acted as the officer of the College, in their rooms, and being appointed only from seven years to seven years, it is impossible that he could have acquired any title against Trinity College, except to payment for such works as he actually did in the Dissecting-rooms for the Provost and Senior Feltows, in addition to any Lectures he may have delivered there as Professor of the School of Physic, if he did deliver such Lectures, which properly ought to have been delivered at Sir Patrick Dun's, the College rooms being allowed by the Act only until the Hospital was erected.

In 1865, a University Anatomist was appointed, to assist the Professor in the School of Trinity College (Petition, p. 4, No. 9); and there was an agreement between Dr. M'Dowel and the College, that he should attend two hours daily in the Dissecting-room (Case of College, p. 5, No. 15); and a resolution of the 18th May, 1861, provided that, at the termination of Dr. M'Dowel's term in 1865, the Board should be at liberty to make new regulations for the Professorships, and to re-appoint, or not, any, or all, of the gentlemen holding the above-mentioned offices. Thus retaining the complete control of the Dissecting-rooms.

On the 24th October, 1872, a Professor of Comparative Anatomy was appointed by Trinity College (Petition, p. 8, No. 21).

The 30th Vict., c. 9, provides, that the University Professors of Chemistry and Botany are to cease to deliver the Clinical

Lectures required by the 40th Geo. III., and instead thereof such Lectures shall be delivered by the Professor of Surgery in Trinity College, and the University Anatomist; and the said Professor of Surgery, and University Anatomist, shall be respectively entitled to the fees payable theretofore to the said University Professors of Chemistry and Botany. And by sec. 5, each College is to make regulations respecting Lectures to be given by its own Professors.

It appears (Answer of College, p. 4) that Mr. Barton held the office of Lecturer in Practical Anatomy, and Mr. Bennett that of University Anatomist (Petition, p. 5, No. 10); and there was an understanding with Dr. M'Dowel that he should attend for two hours daily in the Dissecting-rooms (p. 5). From which it follows, that Dr. M'Dowel discharged duties beyond those which he had at Sir Patrick's Dun's, and for which extra duties he is entitled to be paid by the College, beyond his original salary and fees, and that the other gentlemen are also entitled to be paid, which they have been, in fact, by the Bursar, an officer of the College, from the 1st February, 1868. But the amount in each case must depend upon the contract of each with the College.

By these changes and regulations the Lectures and Payments have been so mixed up between the School of Physic and the Dissecting-rooms of Trinity College, and unsettled from time to time, it is impossible to say how much, if any, of the duties, under the 40th Geo. III., have been discharged in the Dissecting-rooms, or how much ought to be paid by the Board for the business transacted there. It is only clear that Dr. M'Dowel is entitled to the fees for Clinical, and other Lectures delivered by him as University Professor of Chirurgery and Anatomy in the School of Physic. But such other Lectures as he may have delivered in the Dissecting-rooms of Trinity College do not come within the description of fees provided by the 40th Geo. III., and they are to be paid for by the Provost and Senior Fellows (Petition, p. 6, No. 17).

In fine, the notice of the 24th Dec., 1872, being disclaimed, or withdrawn, by the Board of Trinity College, and no appeal being given by the Statute until after an admonition, it seems that the Visitors have not any power to deal with the resolution of the 1st February, 1868, whether it be valid or invalid. To me it appears to be valid. As to Dr. M'Dowel's claim to the fees taken in the College Dissecting-rooms, he can have none, except as to such, if any, as are paid for Lectures delivered by him there in his character of University Professor of Chirurgery and Ana-

tomy in the School of Physic, and such others, if any, as the Provost and Senior Fellows may contract to give him; but these latter are the subject of contract, and not under the Statute, and not recoverable, except on foot of a contract, or for work and labour done.

Vice-Chancellor.—I did not advert to what occurred in the year 1869, to which Dr. Battersby has referred. I concurred in the opinion expressed in the Answer of the Board, that it was irrelevant to the present proceeding. But I ought to observe that as it has been unexpectedly adverted to, my opinion is, that we are not in a condition to say anything as to the merits of the complaint then made. This, however, may be said, that there has been a miscarriage of the procedure directed by the Statute. There is a provision to meet the case of any dissatisfaction felt in reference to the conduct of a University Professor at the Hospital. The College of Physicians had a right to complain to the Board of Trinity College, and if this College did not give redress, there was a right of appeal to the Visitors. But the complaint should have been specific and definite, and the party charged should have had a full opportunity of explanation and defence. With every respect for the Board, I think they were wrong in telling Dr. M'Dowel to go back to the Governors of the Hospital as the persons properly entitled to decide upon the complaint. It appears that Dr. M'Dowel pressed for an investigation, which was refused, and he was referred to his accusers (the Governors), who, in my opinion, were not competent to decide on what was in fact their own complaint. The charge should have been required to be stated by the complainants in a distinct form; and when received in proper form, the Board should have given Dr. M'Dowel a full opportunity of giving to themselves an explanation, and making his defence. But this was not allowed, and, in consequence, a kind of slur was cast upon him. I can well understand, therefore, how he feels as to this. I do not say anything about the merits of the charge, because there is no specific statement, and the facts and circumstances are not before us; but no imputation that might have been cleared up by Dr. M'Dowel should be allowed to remain, to his prejudice, particularly if he has been debarred from making his defence before the tribunal to whom the complaint was preferred, who ought to have decided ultimately, on their own responsibility. I am quite satisfied that nothing unfair was intended in what took place. Nobody knows better than I do, from long and intimate intercourse, that the members of the Board are incapable of advisedly doing any-

thing that would be unkind or unjust; but I think that the course provided for by the Statute has not been pursued. I here must add, that when Dr. M'Dowel was re-elected, it must be taken that imputation (if any) was removed or condoned, and therefore I stopped Mr. Butt from going into this part of the case as it had become irrelevant; and but for what Dr. Battersby has now said, I should not have noticed it further. The result of our decision is this—Dr. Battersby and I agree upon all the material parts of the case, with the exception of that as to the validity of the Resolution, and upon these the Petition is dismissed. Upon the other part, as we differ in opinion, there will be no rule. It is not a case in which we could, with propriety, apply to the Chancellor of the University, as our opinions were given at the request of the parties for their guidance, and not *de jure* as deciding a right. So far as my advice may avail, where so much has been said upon both sides, I would say that as nothing could be more prejudicial to this time-honoured Institution than any internal disagreements at this crisis, the best way to sustain its dignity and credit will be to terminate the contention by amicable and mutual concession.

*Mr. Fitzgibbon.*—I should like to say a word on behalf of Dr. M'Dowel. The Board can only act upon consultation with each other, or after a conference with the other Body who have an interest in the Medical School. Dr. M'Dowel is an individual who is subject to the control of the governing body of the Medical School, but as he is most anxious that nothing should be done that can be supposed to be injurious to the School, the suggestion made that the transaction should result in an amicable settlement of the question without further difficulty, is one in which he cordially concurs, and he commissions me to do anything in my power to bring about that result—a concession that will involve the giving up of a strict right; and under these circumstances the Board should confer and consult in reference to the matter. I think it is right to take the earliest opportunity of saying that he is anxious, so far as lies in his power, to meet the wishes of the Board, and to consent that the Medical Officer of Sir Patrick Dun's should be the Medical Officer of the School of Trinity College alone; and in any measure adapted to secure the interests of Sir Patrick Dun's, no difficulty shall be raised by him. Coming to an adjustment of the matter on this basis, he is desirous to be understood as having at heart the good of this Medical School.

*Dr. Ball.*—I have merely to say that the Board cannot act except when all the members of it have assembled together.

All the members are not now present, therefore it is impossible for me now to give an answer. The regulation is one thing—the position of Dr. M'Dowel is another. As regards the rule, they are bound to consider that another Body of equal importance with themselves—the College of Physicians—have passed the same Resolution, and by not objecting to it are parties to its being passed here. I have no doubt that the Board will pay the greatest attention to the judgment of the Visitors, and consider the matter at their earliest opportunity.

Dr. Battersby.—As I understood the proposal made by Dr. M'Dowel in his Petition, it was, that if a satisfactory arrangement were made as to his fees, he would not object to obey the rule of 1868.

*Mr. Fitzgibbon.*—What was stated in the correspondence, assuming the matter about the fees to be arranged, amounts to this, that if Dr. M'Dowel were required he would return to the Clinical instruction in Sir Patrick Dun's Hospital, and not engage in teaching in the Whitworth Hospital. I understand that both the Visitors are unanimous in saying that the dedication of the fees in the Anatomy School to their present purpose is legal, therefore it would be difficult to ask him to comply with the proposal that he should relinquish the Clinical School at Sir Patrick Dun's.

Dr. Battersby.—In the Dissection-room Dr. M'Dowel seems to have done some of the work that belongs to Sir Patrick Dun's, and he would be entitled to fees.

*Mr. Fitzgibbon.*—The fee under the Act of George was three guineas for each student—there will not be any difficulty in reference to this—a fee in Trinity College for Professorial Lectures is connected with the Professor in the School of Physic; in detail there would be no difficulty, if the basis you suggest were considered by the Board. I would assume that the Medical Dissecting Schools should be conducted upon the basis of the Resolution of October, 1872, and no further question would be raised as to the legality of that Resolution. This would be a considerable concession, and the Board will pardon me if I say so—it gives up a good deal that Dr. M'Dowel had received. The Resolution of October, 1872, divided the fees into two equal parts, but divided one into two, and gave the half to the Professor of Comparative Anatomy. In round numbers, it was about the amount of the emolument for Clinical teaching at Sir Patrick Dun's. I thought it fair to concede this; but these shall be taken as the dividing lines, that half of the Dissecting-room fees should be paid to the Professor of Comparative Anatomy,

the Professor of Anatomy retaining the Clinical teaching; but as the Board do not wish that the instruction should be carried on in two places, that he should be relieved from teaching in Sir Patrick Dun's.

VICE-CHANCELLOR.—That would be interfering with a department of the Medical School in which there is a joint interest in the two Colleges.

*Mr. Fitzgibbon.*—I am merely speaking about matters which are for the consideration of the Board, and to be communicated to the College of Physicians. I think it is a recommendation that would lead to Dr. M'Dowel having the assistance of the new Professor in the School of Anatomy, and tend to a mutual understanding between them, by which the School could be worked harmoniously.

VICE-CHANCELLOR.—This would at least require the concurrence of the College of Physicians. I do not see how the Board could be a party to taking the University Professor away from attendance at Sir Patrick Dun's: it is only in the case of his neglect to lecture there that a substitute is to be appointed; but the Board could not connive at neglect, by providing for it beforehand. As to the matter of the fees, there is a power in the Board to assign salaries to the Professors appointed by them under the College Statute. The instruction given in the Schools of the University should be scientific, and I consider that the office of Professor of Comparative Anatomy is very suitable to such instruction. The Board have the power of giving an adequate salary to this Professor out of the College funds; so that if the settlement should turn on the question of fees, there is no difficulty in adjusting the differences that have arisen from the appropriation of a part of the fees paid for Dissections, to compensate the Professor of Comparative Anatomy.

THE END.

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